

1997

State of Utah v. John Peter Kiriluk : Brief of Appellee

Utah Court of Appeals

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Recommended Citation

Brief of Appellee, *Utah v. Kiriluk*, No. 970200 (Utah Court of Appeals, 1997).

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IN THE UTAH COURT OF APPEALS

STATE OF UTAH, :
 :
 Plaintiff/Appellant, : Priority No. 2
 :
 v. :
 :
 JOHN PETER KIRILUK, : Case No. 970200-CA
 :
 Defendant/Appellee. :

BRIEF OF APPELLEE

ADDENDA

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IN THE UTAH COURT OF APPEALS

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v.	:	
	:	
JOHN PETER KIRILUK,	:	Case No. 970200-CA
	:	
Defendant/Appellee.	:	

BRIEF OF APPELLEE

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ADDENDA

TABLE OF CONTENTS

- A - Defendant's Statement (R.1204)
- B - Motion to Suppress (R.72-74)
- C - Transcripts, 16 July 1996 (R.381-387, 471-482)
- D - Motion to Suppress (R.126-127)
- E - Transcripts, 22 October 1996 (R. 518-529)
- F - Transcripts, 29 October 1996 (R. 563-566) and 30 October 1996 (R. 936-956)
- G - Transcripts, 30 October 196 (R. 1003-1005, 1017-1023, 1032-1033)
- H - Transcripts, 30 October 1996 (R. 927-942, 956-975) and 31 October 1996
(R. 1177)
- I - Utah R. Evid. 804(b)(3)

ADDENDA

ADDENDA A

THIS IS AN INTERVIEW BEING CONDUCTED AT THE METROPOLITAN HALL OF JUSTICE ON 03/26/96, AT 0045 HOURS. I'M DETECTIVE CARR, ALSO PRESENT IS JOHN KIRILUK, RIGHT?

A. Kiriluk. (John Kiriluk)

Q. KIRILUK, COULD YOU... (Det. Carr)

A. Kir luk. (John Kiriluk)

Q. OKAY, COULD YOU SPELL THAT FOR ME? (Det. Carr)

A. K-I-R-I-L-U-K. (John Kiriluk)

Q. L-U-K, OKAY. AND WHAT'S YOU'RE DATE OF BIRTH? (Det. Carr)

A. 05/12/71. (John Kiriluk)

Q. Okay. Okay, Mr. Kiriluk uh, like I explained to you before uh, gonna read you your rights and then just gonna ask you a few questions about Mike. Things of the past, when you last saw him, things of that nature. Okay? You do have the right to remain silent. Anything you say can and will be used against you in a court of law. You do have the right to have an attorney, and if you cannot afford an attorney, one will be appointed, free of charge, to represent you before any questioning. You can decide at any time to exercise these rights and not make any statements or uh, continue with the conversation. Okay? (Det. Carr)

A. Okay. (John Kiriluk)

Q. At, do you understand those rights? (Det. Carr)

A. Yeah. (John Kiriluk)

Q. Okay. On the way down here, we were talkin about how you met Mike. Can you just go over it again, give me a little background on... (Det. Carr)

A. I was up at Hy & Mike's, that's uh, with uh, couple friends of mine. (John Kiriluk)

Q. 'Bout how long ago? (Det. Carr)

A. It's probably three and a half, three months ago. (John Kiriluk)

Q. Three and a half, three months. And, he was playin pool, you were playin pool?

- (Det. Carr)
- A. He was up there. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. And he knew uh, this guy named Kirk Cooley, he's now (Inaudible). (John Kiriluk)
- Q. Kurt or Kirk? (Det. Carr)
- A. Kirk. (John Kiriluk)
- Q. So K-l-r-k? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh, and we were back down south. And they knew each other from shootin pool up there all the time. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. And I knew Kirk because my good friend is datin his sister. So that's how, that's... (John Kiriluk)
- Q. (Inaudible) (Det. Carr)
- A. How that evolved. (John Kiriluk)
- Q. Who would be your good friend that's datin the guy's (Det. Carr)
- A. Sterling. (John Kiriluk)
- Q. Okay, Sterling is dating... (Det. Carr)
- A. Kirk's sister. (John Kiriluk)
- Q. Kirk's sister. Okay. (Det. Carr)
- A. And Kirk knows, no, er, Mike... (John Kiriluk)
- Q. Okay. Now, okay?...explain that about Thumper? (Det. Carr)

- A. That's his like, you know, that's what I call him. (John Kiriluk)
- Q. Street name? Tag? (Det. Carr)
- A. Tag. Just tag. (John Kiriluk)
- Q. Okay. And... (Det. Carr)
- A. He's... (John Kiriluk)
- Q. What kind of guy was Mike? (Det. Carr)
- A. Quiet. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh, he really didn't talk much, didn't... (John Kiriluk)
- Q. Didn't bother anyone? (Det. Carr)
- A. Didn't do anything. Uh, didn't like my Saber. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh, was content to sit there and have his girlfriend hate him and (Inaudible) happy, you know? (John Kiriluk)
- Q. Uh, did, did Mike have a temper at all or anything? (Det. Carr)
- A. He got irritated at... (John Kiriluk)
- Q. Over little things or ... (Det. Carr)
- A. Little things uh, he set up other people. Uh, if I was in a bad mood, he'd get in a bad mood. (John Kiriluk)
- Q. Just because. (Det. Carr)
- A. Just because. Uh, that type of person. (John Kiriluk)
- Q. Did ya ever see him get in a fight or.... (Det. Carr)
- A. Never saw him get in a fight. (John Kiriluk)

- Q. Never ever? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. Uh... (Det. Carr)
- A. 'Cause most the time when I saw him busy they're playin pool or he'd, I'd picked him up and he didn't like this, watch TV, just kick back and bullshit. (John Kiriluk)
- Q. Okay. The house, that's where... (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. The apartment. (Det. Carr)
- A. Yeah. (Inaudible) (John Kiriluk)
- Q. Where we came? Okay. (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. And that's you're apartment, alone? (Det. Carr)
- A. No, I have a roommate. (John Kiriluk)
- Q. Okay. What's your roommate's name? (Det. Carr)
- A. Chance. (John Kiriluk)
- Q. Janice? (Det. Carr)
- A. Chance. (John Kiriluk)
- Q. Oh, Chance. Okay, I'm sorry. (Det. Carr)
- A. Chancelyn with (Inaudible) (Inaudible) (John Kiriluk)
- Q. Okay. And was, was Chance there? (Det. Carr)
- A. Uh, she'd been there from time to time. She has her own life. (John Kiriluk)
- Q. Okay. So you, you guys are just strictly roommates? (Det. Carr)

- A. Strictly roommates. (John Kiriluk)
- Q. That's, that's it? Okay. (Det. Carr)
- A. Friends. (John Kiriluk)
- Q. Friends, too? (Det. Carr)
- A. Yeah. But she has her road, I have my road... (John Kiriluk)
- Q. They don't cross all that often? (Det. Carr)
- A. I don't, I don't like a lot of the people she knows. (John Kiriluk)
- Q. Uh, did Mike know Damon? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Had he ever met Damon or... (Det. Carr)
- A. Uh, he met him twice. (John Kiriluk)
- Q. Does Damon hang out at your apartment? (Det. Carr)
- A. Uh, when I bumped into Autumn, you know, as I, "Christ, we gotta do something now." So they hung out for two days and went home. They came back, you know, that type thing. (John Kiriluk)
- Q. Wh..where did you bump into Autumn at? (Det. Carr)
- A. I bumped into her up at Dana's house. (John Kiriluk)
- Q. Uh, Okay. Uh, now Autumn is an old friend of yours, right? (Det. Carr)
- A. Old family. (John Kiriluk)
- Q. Old family friend, (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. You've known her for years, and Autumn is married to Damon. And Damon's last name is Munford? (Det. Carr)

- A. Munford. (John Kiriluk)
- Q. M-U-N? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. F-O-R-D? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. Uh, 'bout how old is he? (Det. Carr)
- A. Twenty-nine. (John Kiriluk)
- Q. Twenty-nin...oh, Okay. (Det. Carr)
- A. (Inaudible) thirty, twenty-nine, thirty. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. I mean I just started gettin to know Autumn again. I haven't seen her since I was twelve years old. (John Kiriluk)
- Q. You met her, you bumped into her again, how many days ago? Er... (Det. Carr)
- A. It would be two and a half weeks ago. (John Kiriluk)
- Q. Two and a half weeks? (Det. Carr)
- A. Two and a half (Inaudible). (John Kiriluk)
- Q. Uh... (Det. Carr)
- A. They come down, have dinner, we have beers and party and... (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Make (Inaudible) foods or I do some drawing and glass art. (John Kiriluk)
- Q. Stuff like that? (Det. Carr)
- A. Yeah. Just, bullshit. (John Kiriluk)

- Q. Uh, we, Mike was found up in the foothills of Bluffdale. Do you know where that's at? Do you know where Bluffdale's at? (Det. Carr)
- A. It's out by Sandy... (John Kiriluk)
- Q. Well, west, way west of Sandy, also south. Do you know where Riverton's at? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay, uh, Bluffdale is kinda south-west of Riverton. (Det. Carr)
- A. Okay. (John Kiriluk)
- Q. Uh, out towards that corner of the county. (Det. Carr)
- A. Out by the prison? (John Kiriluk)
- Q. Well, west of the prison. (Det. Carr)
- A. Okay. (John Kiriluk)
- Q. West of the prison. Uh, he was found on Friday at about three pm. Okay, by some people that were uh, driving a four-wheel drive up through foothills. Uhm, so they contacted the Sheriff's Office, naturally, and uh, we responded uh, when we found out who he was uh, that's where we started our investigation. We found out who his parents were. So we go an talk to the parents and the parents said that uh, well two things: they said uh, uh, Rhonda, Rhonda Hansen, which is Mike's old girlfriend, Okay? Now maybe you, you might have seen Rhonda or something.... (Det. Carr)
- A. I only saw, I only saw one girl at his house, once. (John Kiriluk)
- Q. Once? If, if I show ya a picture, do you think you'd be able to recognize her? (Det. Carr)
- A. She had long brown hair. No. (John Kiriluk)
- Q. That's, that's... (Det. Carr)
- A. Not the girl I saw. (John Kiriluk)
- Q. That's not the girl you saw there? (Det. Carr)

- A. It must have been his buddies girlfriend or somethin. (Inaudible) (John Kiriluk)
- Q. His buddies? (Det. Carr)
- A. Yeah, we stopped by uh, one afternoon and he was shootin his basketball with somebody. (Inaudible) found out who he was. His parents were gone, the house was locked. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. 'Cause he was gonna let me borrow some stuff and "I can't get in." I'm like, what kind of parent don't let ya get into your own (Inaudible)? (John Kiriluk)
- Q. (Laughter) yeah. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. I don't know, but it happens. (Det. Carr)
- A. Never, never got her name. (John Kiriluk)
- Q. Nothin like that? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. Uh, so we go and we, we talk to the parents and they said, "Well, the, the last time that we saw uh, Mike was on Thursday night at nine pm when he left with uh, you and Damon. Okay? Uh, agai...it was in Damon, Damon has the Nova, right? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. Okay, and you drive the Escort? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. Okay. And we, we chatted with Rhonda, too. Uh, that was uh, that was the next day. Anyway, that was, that was the last time that, that they saw Mike leave, wh, what did you guys do? (Det. Carr)
- A. We went up there to shoot pool. (John Kiriluk)
- Q. At Hy & Mike's? (Det. Carr)

- A. Uh, no went down to Cushion & Cue. (John Kiriluk)
- Q. Where's, where's Cushion & Cue? (Det. Carr)
- A. (Inaudible) uh, 30th & State. (John Kiriluk)
- Q. Oh, Okay. Yeah. Right uh, by Sociables, right? (Det. Carr)
- A. No, down, it's closer to Village Inn and Greasy Catering. (John Kiriluk)
- Q. Oh, Okay. Yeah. (Det. Carr)
- A. And... (John Kiriluk)
- Q. Blue building or something like that? (Det. Carr)
- A. Yeah, blue and white. (John Kiriluk)
- Q. Blue and white. Okay. (Det. Carr)
- A. Across the street from, what's that, Golden Spike, (Inaudible) whatever. (John Kiriluk)
- Q. Silver Spike. Silver Spike. No. Golden... (Det. Carr)
- A. Golden Spike. (John Kiriluk)
- Q. Golden Spike, there we go. (Det. Carr)
- A. And musta watch you all do uh, prostitution bust over there... (John Kiriluk)
- Q. (Laughter) Oh.. (Det. Carr)
- A. Everybody be at the windows. (John Kiriluk)
- Q. That's, that's a favorite place for 'em, you know? 'Ya gotta go with your hot spots. (Det. Carr)
- A. Yeah, we went down there and uh, 'cause Damon had to go to work later on. (John Kiriluk)
- Q. Okay. (Det. Carr)

- A. And uh... (John Kiriluk)
- Q. Wha, now was it just you three? (Det. Carr)
- A. Yeah, just us three. (John Kiriluk)
- Q. Just, Okay. Wha... (Det. Carr)
- A. Just us three. Guys night out. (John Kiriluk)
- Q. Was, was Mike seemin upset or anything? Somethin seemed to bother him uh... (Det. Carr)
- A. No. (John Kiriluk)
- Q. Was he pretty cool? (Det. Carr)
- A. He was pre-occupied. (John Kiriluk)
- Q. With, did he say what? (Det. Carr)
- A. Why I had to take him up to uh, Denny's, there above uh, Hy & Mikes, where was that. what was that, 94th and 7th? (John Kiriluk)
- Q. Well, there's the Hy & Mike's on... (Det. Carr)
- A. When I say "Hy & Mike's", I'm talkin about the 92 & 7th. (John Kiriluk)
- Q. Okay. Yeah. 92 & 7th. (Det. Carr)
- A. Because the 33rd and 30th East is a bad place. (John Kiriluk)
- Q. Yeah. I know. There's, there's been a few things that have happened up there. (Det. Carr)
- A. That reminds me of stabbing (Inaudible) that goes back to Ft. Bragg. (John Kiriluk)
- Q. (Laughter) (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Yeah, we had a murder up there not to long ago, as a matter of fact. (Det. Carr)

- A. I went walkin in and there was a quarter pound of weed layin on... (John Kiriluk)
- Q. (Inaudible) (Det. Carr)
- A. The sidewalk. (John Kiriluk)
- Q. Uh... (Det. Carr)
- A. Big ole brick. Just laying there. (John Kiriluk)
- Q. Now, I, I, Mike's already dead, so, his parents knew that he did drugs. I knew that he did drugs. Okay? He, he was into a little bit of crank and a little bit of uh, marijuana. Did you, did you know him to do anything else? (Det. Carr)
- A. He was a runner. (John Kiriluk)
- Q. He was a runner? So he'd mule for people then? Is that how he's makin money? (Det. Carr)
- A. Probably. (John Kiriluk)
- Q. Probably? (Det. Carr)
- A. Huh. (John Kiriluk)
- Q. Look, (laughter). Did, did you ever know him to have a job? I guess that'd be a better question. (Det. Carr)
- A. Nope. Never asked. (John Kiriluk)
- Q. Nev...okay, never asked? He never asked ya to go & pick him up at work or anything like that? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Okay. So you guys go and you're playin pool at Cushion & Cue uh, did you drive, did you drive right from Mike's house to Cushion & Cue? (Det. Carr)
- A. Yeah, we drove straight down there. (John Kiriluk)
- Q. Didn't make any stops, didn't go to the bank, nothin like that? (Det. Carr)
- A. No. (John Kiriluk)

- Q. Okay. And you played there for roughly how long? Can you give me a time frame? (Det. Carr)
- A. Two hours tops. (John Kiriluk)
- Q. Two hours at the most? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay, so say, do you... (Det. Carr)
- A. Uh, I was like, I got home at twelve, twelve-thirty. (John Kiriluk)
- Q. Twelve or twelve-thirty? (Det. Carr)
- A. Yeah and I, I dropped, him off at Denny's. (John Kiriluk)
- Q. On, which, now which Denny's? (Det. Carr)
- A. It's like 94th and 7th East. The one right up there. (John Kiriluk)
- Q. Is there a Denny's there on 94th and 7th? I'm tryin to think. (Det. Carr)
- A. It's 94th or 98th. It's right there on 7th East. (John Kiriluk)
- Q. Okay. Which side of the road? (Det. Carr)
- A. Right hand side. (John Kiriluk)
- Q. Right hand, so that would be the west side? (Det. Carr)
- A. West, west side, south corner. (John Kiriluk)
- Q. South corner? (Det. Carr)
- A. Right there at the intersection. There's uh... (John Kiriluk)
- Q. Oh, that I, I think it's a Dee's. (Det. Carr)
- A. Dee's? (John Kiriluk)
- Q. Not a, not a Denny's. (Det. Carr)

- A. Okay. (John Kiriluk)
- Q. Okay. So that's where you dropped him off at? (Det. Carr)
- A. Yeah. He had to meet Hoagie. (John Kiriluk)
- Q. Had to meet Hoagie? (Det. Carr)
- A. Hoagie. (John Kiriluk)
- Q. Who's, who's Hoagie? (Det. Carr)
- A. That's who he was gonna meet. (John Kiriluk)
- Q. That's who he knew 'em for. And this, what time would you say ya dropped him off at? (Det. Carr)
- A. Eleven-thirty, quarter to twelve. (Inaudible) had to meet him... (John Kiriluk)
- Q. Uh.. (Det. Carr)
- A. And then he was gonna call me. (John Kiriluk)
- Q. Later that night? (Det. Carr)
- A. Later that night, next day. (John Kiriluk)
- Q. Was he suppose to do a run for Hoagie that night? Was that your understanding or what? (Det. Carr)
- A. That's what I... (John Kiriluk)
- Q. Gathered... (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Out of it? Okay. (Det. Carr)
- A. I don't ask questions. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. You know, just like you have your road... (John Kiriluk)

- Q. Yeah, yeah, I hear ya. Uh... (Det. Carr)
- A. I mean, I've, I've tried, 'cause he was worried about. He used to, (Inaudible) before when he had his chemical license or farmer license or somethin... (John Kiriluk)
- Q. Hoagie did or... (Det. Carr)
- A. No. Mike. (John Kiriluk)
- Q. Mike had a chemical license? (Det. Carr)
- A. Somethin. He told me he used to Mike would get him red box all the time. (John Kiriluk)
- Q. For (Inaudible)? Huh. Okay. (Det. Carr)
- A. Fertilizing for all I know. (John Kiriluk)
- Q. (Laughter) yeah, I, I ... (Det. Carr)
- A. You know. (John Kiriluk)
- Q. I know what you're saying. I know what you're saying. So, so you drop him off about quarter too or twelve? (Det. Carr)
- A. No. See... (John Kiriluk)
- Q. Quarter too? (Det. Carr)
- A. Yeah. Quarter till eleven thirty. Quarter till. (John Kiriluk)
- Q. Okay. And then does Damon uh, stay with him or does he stay with, well, wait a minute, Damon's... (Det. Carr)
- A. Damon... (John Kiriluk)
- Q. Drivin, right? (Det. Carr)
- A. No, Damon's, I took my car. (John Kiriluk)
- Q. Oh, Okay, now (Inaudible). (Laughter) Da... (Det. Carr)
- A. Damon, Damon drove us, drove me up there to go to Michael's (Inaudible). (John

Kiriluk)

- Q. Okay, at his house? (Det. Carr)
- A. At his house. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Okay? Frank was using my car. (John Kiriluk)
- Q. Okay, Frank at the apartment? (Det. Carr)
- A. At the apartment... (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Using my car. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Okay? (John Kiriluk)
- Q. I'm with ya so far. (Det. Carr)
- A. Damon dropped me off at my house and I got my car to go work (Inaudible). (John Kiriluk)
- Q. From Cushion and Cue? (Det. Carr)
- A. From Cushion and Cue. (John Kiriluk)
- Q. So did Damon go to Cushion and Cue? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. With you guys? (Det. Carr)
- A. Yeah. He wouldn't play pool with us. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. 'Cause Autumn was with my girlfriend. (John Kiriluk)

- Q. Okay. All right, so you did make a stop? You, you said that... (Det. Carr)
- A. No, no, this is, this return trip. It's not... (John Kiriluk)
- Q. Oh, Okay. Okay. (Det. Carr)
- A. We went, we went there to play pool because, you know, Frank told me he's gonna be home about whenever. (John Kiriluk)
- Q. Well Frank didn't go with ya, right? (Det. Carr)
- A. No. Frank don't play pool that often. (John Kiriluk)
- Q. Okay. Well, well I... (Det. Carr) .
- A. As you know, you can obviously tell why. (John Kiriluk)
- Q. Yeah. Well, I'm just gettin, I was gettin a little confused here when you said that they came down, and then you left, Okay. So you head back to your place from the Cushion and Cue. Get in separate cars at that time, right? (Det. Carr)
- A. I get in mine. Damon goes, "Come on." (John Kiriluk)
- Q. And Damon goes to work and Mike rides with you back out to the Dees 'cause he says he's gotta meet Hoagie there? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. Okay. What do you know about Hoagie? (Det. Carr)
- A. That's a good question. (John Kiriluk)
- Q. Well, yeah. (John Kiriluk)
- A. Half brothers (Inaudible). (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. All I know is that... (John Kiriluk)
- Q. And, and, oh, I, I, I need as much truth here as possible, Okay? (Det. Carr)
- A. Well I'll put it on the line... (John Kiriluk)

- Q. Okay. O... (Det. Carr)
- A. Hoagie's a pro cook. (John Kiriluk)
- Q. He's a what? (Det. Carr)
- A. A pro cook. (John Kiriluk)
- Q. Pro cook? Okay. (Det. Carr)
- A. Okay? Uh, mostly a gallon. (John Kiriluk)
- Q. So he's plannin on makin a big batch? (Det. Carr)
- A. Already had some of it done. (John Kiriluk)
- Q. Oh, Okay. (Det. Carr)
- A. Okay? (John Kiriluk)
- Q. And Mike was suppose to do the run for him that night? (Det. Carr)
- A. No. He was suppose to meet him to get a quarter for him. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. That's what I gathered. Would he go get this and get this for me, get this for me, a gopher. A goph-runner. (John Kiriluk)
- Q. Okay. Now I know Rhonda knows this Hoagie, c...'cause she mentioned the name. Are you sure you don't know this Rhonda? (Det. Carr)
- A. I've never met her. And my, (simultaneous inaudible conversation) Mike met her at (Inaudible) burger. (simultaneous inaudible conversation) (John Kiriluk)
- Q. (simultaneous inaudible conversation) or somethin like that? (simultaneous inaudible conversation) (Det. Carr)
- A. He never told me he had a girlfriend or not. (John Kiriluk)
- Q. Okay, Okay 'cause they were.... (Det. Carr)
- A. (simultaneous inaudible conversation) always teasin tellin me he needs to get laid.

(John Kiriluk)

- Q. Well they were fairly serious. I mean, they were even like talkin marriage. They'd supposedly known each other for about a year, year and a half. She's a seventeen year old girl. Doesn't ring any bells with ya? (Det. Carr)
- A. Nope. (John Kiriluk)
- Q. Not at (simultaneous inaudible conversation) (Det. Carr)
- A. (Inaudible) not her. And I never heard the name Rhonda from him. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. The only one he used to talk about was Jen. (John Kiriluk)
- Q. Was Hoagie at Dees, when you guys got there? (Det. Carr)
- A. (Inaudible) I didn't see him. (John Kiriluk)
- Q. Did you stay for a while... (Det. Carr)
- A. No. (John Kiriluk)
- Q. With him? (Det. Carr)
- A. I dropped him off and I went home. (John Kiriluk)
- Q. You, you didn't even go inside the building? That's, that's a "no". (Det. Carr)
- A. No. (John Kiriluk)
- Q. Okay. The, the tape recorder does not record head shakes. (Det. Carr)
- A. I know, they need to invent one. (John Kiriluk)
- Q. But I'm, Okay. So, he gets out, what kind of car or truck does Hoagie drive? (Det. Carr)
- A. Hoagie doesn't have one. He doesn't have his own vehicle. He borrows. (John Kiriluk)
- Q. He borrows from other people? (Det. Carr)

- A. He borrows friends cars uh, supposedly he's got uh, Sportster or... (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh, it's got skull and crossbones on the gas tank, kinda half chopper. (John Kiriluk)
- Q. Okay. But he doesn't drive that to often? (Det. Carr)
- A. Uh huh. (negative) (John Kiriluk)
- Q. What's Hoagie's real name? A first name, do you know a first name? (Det. Carr)
- A. I've been told that he's gone, Brandon Curtis. (John Kiriluk)
- Q. Brandon Curtis? (Det. Carr)
- A. And Mike told me that and when I heard that, I was like, wait a minute, I saw Brandon Curtis like, I was so screwed department, somewhere. (John Kiriluk)
- Q. Do you know a Brandon Curtis? (Det. Carr)
- A. I don't know a Brandon Curtis. No one I know, knows a Hoagie (John Kiriluk)
- Q. Knows a Brandon.... (Det. Carr)
- A. Or a Brandon Curtis. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. No one. Uh, I know a lot of people. (John Kiriluk)
- Q. Okay, uh, had Mike mentioned anything about Brandon Curtis in the back, in the past? (Det. Carr)
- A. Maybe (Inaudible). (John Kiriluk)
- Q. Why? (Det. Carr)
- A. Somebody was after him. (John Kiriluk)
- Q. Someone was after Mike? (Det. Carr)
- A. Somebody was after Hoagie. (John Kiriluk)

- Q. Okay. (Det. Carr)
- A. Okay, and was blaming it on Mike. (John Kiriluk)
- Q. For what? Something do to with (Inaudible) shortage? So did Hoagie think that Brand...er, did Hoagie think that possibly Mike was shorten them on somethin? (Det. Carr)
- A. Could have. But I don't see where Mike, I don't think (Inaudible) Mike would have done with, you know, a quarter pound.(John Kiriluk)
- Q. Is that supposedly how much the short was? A quarter pound on what? Are we talkin weed or ... (Det. Carr)
- A. Coke. (John Kiriluk)
- Q. Coke? Okay. (Sigh) (Det. Carr)
- A. That's what Mike told me and that's what I heard... (John Kiriluk)
- Q. So, so... (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. So he wa afraid that Hoagie might get someone after him? Might hire 'em or what? (Det. Carr)
- A. No, he wasn't worried about that. He was worried about these people that are saying he shorted them. (John Kiriluk)
- Q. Okay. Do you know who these people are? (Det. Carr)
- A. All I know is, evidence. Mexican Mafia. (John Kiriluk)
- Q. M & M. Okay. (Det. Carr)
- A. That's all I know and if you say M & M to me, I'm gonna leave. (John Kiriluk)
- Q. Okay. What (simultaneous inaudible conversation) (Det. Carr)
- A. (simultaneous inaudible conversation) well, eighty percent of 'em will stab their mothers in the back. You know, just to get her dollar uh, I don't know. I just, I don't like 'em. (John Kiriluk)

- Q. Okay. (Det. Carr)
- A. Grewed up in Washington and all, I got jumped on before. (John Kiriluk)
- Q. Just, not on good terms with 'em? (Det. Carr)
- A. Not on good terms with 'em. I don't judge all of 'em. (John Kiriluk)
- Q. Right. (Det. Carr)
- A. But, you know? (John Kiriluk)
- Q. What, so Damon was Autumn and he goes to work, right? Now is he a self-employed person, is that a good way to put it? Or does he work for a business? (Det. Carr)
- A. He, he works for Autumn. He's kinda like uh, I've done some sideline work as like taking the escort or the dancer to the bachelor party, as a bouncer. (John Kiriluk)
- Q. Right. (Det. Carr)
- A. You know? Uh... (John Kiriluk)
- Q. To make sure that everything stays kosher there? (Det. Carr)
- A. And she doesn't get hurt. (John Kiriluk)
- Q. Okay. Is Autumn a dancer then? Or... (Det. Carr)
- A. She's... (John Kiriluk)
- Q. Escort? Somethin along those lines? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Kinda all the above. (John Kiriluk)
- Q. Well, I, I'm not tryin to get her in any sort of trouble... (Det. Carr)
- A. Yeah... (John Kiriluk)

- Q. Okay? (Det. Carr)
- A. It's, I mean, I consider her my sister and it's hard enough for me. (John Kiriluk)
- Q. Okay. Okay. Okay. I, and again, that's not my concern here. I'm, I'm just trying to get a full picture of what's goin on. If... (Det. Carr)
- A. I'm tryin. (John Kiriluk)
- Q. If she wants to be a show girl, if she wants to be an escort, she wants to be a prostitute, don't make no matter to me. Okay? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Uh, what's that? (Det. Carr)
- A. (Inaudible) girl. (John Kiriluk)
- Q. Yeah, as, as long as she didn't kill anyone. That's, that's my main concern. Okay. Uh... (Det. Carr)
- A. Uh, I don't think she's (Inaudible). (John Kiriluk)
- Q. All right. Yeah, I, I know what you're sayin. (Sigh) (Det. Carr)
- A. So, Mike came to me and told me about what he heard. (John Kiriluk)
- Q. Wh...when did he come to you? (Det. Carr)
- A. That was probably three weeks ago. Three and a half weeks ago. (John Kiriluk)
- Q. Okay. Did he mention any more of it that night? Thursday night? (Det. Carr)
- A. He didn't mention anything after the first couple of times we talked about it. 'Cause I needed t... for him to tell me everything that was being said. Then he would call my house saying he's got tails. (John Kiriluk)
- Q. People followin him? (Det. Carr)
- A. Two of 'em. One was in a white and red Bronco the other one was in a Ford Espire. White, (Inaudible) Fords... (John Kiriluk)
- Q. The new Ford Espire? (Det. Carr)

- A. And uh, he went to work with his dad or somethin and they found out where his dad worked uh, same thing with his mom. (John Kiriluk)
- Q. Do you think Mike stole this quarter pound? (Inaudible) dope. (Det. Carr)
- A. If he did, I'd like to know where, what he did with it. I mean, I was always buyin him chew and a drink and gettin him somethin to eat, you know, when he was out. (John Kiriluk)
- Q. Could he use it himself? (Det. Carr)
- A. No way. He didn't do that much. (John Kiriluk)
- Q. Well, yeah, not all at once obviously but... (Det. Carr)
- A. I, I probably seen him do a gram and a half since I've met him. (John Kiriluk)
- Q. Oh, Okay. (Det. Carr)
- A. He was more chewin... (John Kiriluk)
- Q. Did... (Det. Carr)
- A. And every now and again he'd take a toke. Smoke a bowl. (John Kiriluk)
- Q. Okay. Uh.. (Det. Carr)
- A. And we talked about and he was scared to death. (John Kiriluk)
- Q. Did he say that he thinks people are gonna kill him? (Det. Carr)
- A. He was scared. People going to uh, Hy & Mike's, askin for him. This is what he's tellin me and so I called my family and asked 'em to find out who was tailin him. And they came back and told me it was the Mexican Mafia. (John Kiriluk)
- Q. Had, had you been mad at him recently for anything? (Det. Carr)
- A. The only thing I was mad at him for was the fact that he got pissed off at me and because I was havin one of those days and him and two other people were tryin to get him juiced up at the same time. And I blew up. (Inaudible) take me here, do this, uh, come here real quick. (John Kiriluk)
- Q. How long ago was this? (Det. Carr)

- A. Couple of weeks ago. Couple of weeks ago. I blew up. Me and him, you know....
(John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Got a steady job and everything and... (John Kiriluk)
- Q. But that was over? (Det. Carr)
- A. Yeah. And that was over. (John Kiriluk)
- Q. Okay. Uh, I talked to Stephanie Cass. Do you know who she is, right? The one that's got uh, ear uh, thing through her lip. (Det. Carr)
- A. Okay. The blond. (John Kiriluk)
- Q. Yeah. The blond. (Det. Carr)
- A. She's got a nose ring too. (John Kiriluk)
- Q. Uh, no, that's one of her friends. She hit, she had pin through the, she said that she talked to Mike just a few days before it happened and he says, "Hey, I'm on uh..." Now they call you "Cats", right? C-A-T? (Det. Carr)
- A. K-A-T-Z. (John Kiriluk)
- Q. K-A-T-Z. Okay. He said he was on Katz shit, shit list. And was trying to avoid you. Why, why was that? (Det. Carr)
- A. I don't know. Honestly. (John Kiriluk)
- Q. No idea why? (Det. Carr)
- A. Honestly. Other than the fact that he wouldn't return my calls, maybe. (John Kiriluk)
- Q. Okay. But uh... (Det. Carr)
- A. And I called (Inaudible) (John Kiriluk)
- Q. Did, did he owe you money? (Det. Carr)
- A. No. (John Kiriluk)

- Q. Didn't owe you any money? (Det. Carr)
- A. Didn't owe me any money. I called the other (Inaudible) well, he didn't work, how could he owe you much? I called on him, like, he used to wash my car. (John Kiriluk)
- Q. Oh, Okay. (Det. Carr)
- A. He uh, he'd help me clean my house, help me clean the, I do maintance around the building where I live, pick up the grass & stuff. (John Kiriluk)
- Q. You tell him to do that? (Unidentified Person)
- A. No. (John Kiriluk)
- Q. Uh.. (Det. Carr)
- A. He was alwasy there, he was always there. Then after we blew up it was hard for me to get in touch with him. And I don't know if he was still mad at me. (John Kiriluk)
- Q. So this, this Hoagie, as best you can tell, right? Is someone that is named, what, Brandon Curtis? (Det. Carr)
- A. Brandon Curtis. As best I know. (John Kiriluk)
- Q. Yeah. (Det. Carr)
- A. Believe me. Everyone knows him by "Hoagie", that knows him. But no one that I know, knows him. (John Kiriluk)
- Q. Okay. And uh... (Det. Carr)
- A. He's a slippery little bugger. All I know he's like, what, five-six, brown hair. (John Kiriluk)
- Q. Mike was a runner for Hoagie? Right? Gopher? Runner? (Det. Carr)
- A. Gopher, runner... I don't know if he did much of the product itself as in getting necessities for. (John Kiriluk)
- Q. And Hoagie's a prop cook, right? (Det. Carr)

- A. Pro. (John Kiriluk)
- Q. Pro. Okay...(Det. Carr)
- A. Pro cook. Yeah. Which I could find kinda hard to believe since the program's been around since like the early, mid seventies. (John Kiriluk)
- Q. Yeah. Everything comes in cycles, though. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Yeah. Now Brandon, ho...now how did you find out that Brandon, someone was accusing Brandon of shorten it? Or were they accusing Mike of shorten? (Det. Carr)
- A. They were accusing Mike. (John Kiriluk)
- Q. Okay. Mike proffered then, right? He was uh, do you know who these people were? (Det. Carr)
- A. All I know is Mexican Mafia. That's all I know. I don't know names. (Inaudible) would be Jose A and Jose B. (John Kiriluk)
- Q. Yeah. (Det. Carr)
- A. That's, that's all I know. 'Cause the source of this was coming from... and one of the things I thought about (End of Side A of Tape 1.) (John Kiriluk)
- Q. Okay, this will be a continuation of the same interview on side 2. (Det. Carr)
- A. One of the things I've thought about is, I was wondering if maybe the Mexicans were sayin this about Mike thinkin he was related to Brenda Brown. (John Kiriluk)
- Q. Okay. Now, Brenda Brown... (Det. Carr)
- A. She's, she's the one that rolled over on the tunnels a couple months back. (John Kiriluk)
- Q. Okay, I'm not aware of that. (Det. Carr)
- A. Oh, you didn't see that on the paper or anything? She got busted for some weed and wrote her up on the Mexican tunnels. (John Kiriluk)
- Q. Uh huh. (negative) (Det. Carr)

- A. They're pipelines. (John Kiriluk)
- Q. Yeah, I, I realize what you're sayin there but I hadn't, I hadn't heard of that, that goin on. (Det. Carr)
- A. (Inaudible) she rolled. (John Kiriluk)
- Q. Oh, was it her and her husband? Were they in it together? (Det. Carr)
- A. No. It was her. Her husband wasn't there. (John Kiriluk)
- Q. Oh, okay. (Det. Carr)
- A. From what I read (Inaudible)... (John Kiriluk)
- Q. 'Cause I remember a couple that were using aliases a little while ago that rolled over on some people. But I, I don't know what their true names were, I only read that they're aliases. Drew and somethin like that, Drew and... (Det. Carr)
- A. No, this said Brenda Brown. She got busted for like two pounds of weed or somethin like that and just, served it up. (John Kiriluk)
- Q. Just on a platter, huh? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. I could, I could see where that would come from but, then again, you know that's just one of my things. Tryin to figure it out. Because he said Mike got to do something and he seems like the person that handles suitcase, take the suitcase without even looking. Wouldn't even ask ya what's in it. Just slip a piece of paper with the address. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. You know? He just.. (John Kiriluk)
- Q. He just did it? (Det. Carr)
- A. He just did it and not so much as street smart as in just d...here, you know? (John Kiriluk)

- Q. Would Hoagie want Mike killed? To save his reputation with the Mexican Mafia or to save his own skin with the Mexican Mafia? (Det. Carr)
- A. To save, to save his rep with the Maf, yeah. 'Cause the Maf's running prope dope. (John Kiriluk)
- Q. Okay. So for him to what, redeem himself, I guess you'd say? (Det. Carr)
- A. That's a theory. I mean... (John Kiriluk)
- Q. Is a good theory. (Det. Carr)
- A. It's a good one. But, you know, I mean, but why supposedly he's known Hoagie for like two or three years. (John Kiriluk)
- Q. Would Hoagie have, well, I'm, I'm not sayin Hoagie actually did hands on. But would Hoagie get someone to do it? (Det. Carr)
- A. Well from what Mike told me about Hoagie, he had the access. (John Kiriluk)
- Q. Hoagie did? What do you mean, he had the access? (Det. Carr)
- A. Uh, well he, rode a Harley. (John Kiriluk)
- Q. Okay. Well, I ride a Harley. (Det. Carr)
- A. (simultaneous inaudible conversation) didn't fly, didn't fly colors but associated with it and also with the Mexicans and then... (John Kiriluk)
- Q. But would the Mex....would the Mexican Mafia get directly involved in that or would they let Hoagie deal with it? (Det. Carr)
- A. (simultaneous inaudible conversation) they'd look like he's do it. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. I mean, in the drug world you can find anybody to do anything. (John Kiriluk)
- Q. What would a killing like that cost? Would you have any idea? (Det. Carr)
- A. I don't know. (John Kiriluk)
- Q. Well... (Det. Carr)

- A. I did in the military... (John Kiriluk)
- Q. I k.... (Det. Carr)
- A. But I don't, I can't put a price on human life. (John Kiriluk)
- Q. Okay. Uh... (Det. Carr)
- A. You know what I mean? (John Kiriluk)
- Q. Yeah, I, I know what you're sayin. (Det. Carr)
- A. But that, that (Inaudible) a hundred bucks. You couldn't get 'em. (John Kiriluk)
- Q. How much is a quarter pound of prope* dope? (Det. Carr)
- A. You're looking at about uh, forty-five hundred. (John Kiriluk)
- Q. Street value? (Det. Carr)
- A. Well, muler calls, twenty-five hundred. (John Kiriluk)
- Q. So that's what the people woulda been out, right? (Det. Carr)
- A. 'Cause a pound goes anywhere from ten to fifteen. Uh, all depends on the quality of (Inaudible). And from what Mike said this guy would eight screen to start with. And he used to make it all the time and then stopped. Got too hot. Uh, I couldn't even and I could find (Inaudible) and if I really have to find him, I'll just call the family. (John Kiriluk)
- Q. Okay, you, your family? Your immediate family, or uh... (Det. Carr)
- A. My family. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh, I'm part of the Cigarillo* family. (John Kiriluk)
- Q. Okay, the Cigarillo* uh, what's, what's that mean? That's uh... (Det. Carr)
- A. New York, Las Vegas, (John Kiriluk)
- Q. Okay. (Det. Carr)

- A. Detroit. (John Kiriluk)
- Q. Okay. I see what you're saying. Uh... (Det. Carr)
- A. That's, that's my family. (John Kiriluk)
- Q. So you're connected? (Det. Carr)
- A. No. I won't... (John Kiriluk)
- Q. Your not connected? (Det. Carr)
- A. I won't go there. (John Kiriluk)
- Q. Okay. Okay. (Det. Carr)
- A. (Laughter) uh, I won't go there. (John Kiriluk)
- Q. (Inaudible) (Det. Carr)
- A. I mean, I'll go to my family for help for me, you know what I mean? (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. Uh. Yo.. (John Kiriluk)
- Q. Okay. I (simultaneous inaudible conversation) (Det. Carr)
- A. (simultaneous inaudible conversation) where else can I get a hundred bucks to, you know, to pay my light bill. But, it, it's just like my mom. Me and her, she raised me. Dad was gone. She wouldn't do it. You know, she made it on her own. 'Cause if you ask them a favor, even if they're family, you gotta do a favor back. (John Kiriluk)
- Q. Yeah. You're in debt. (Det. Carr)
- A. And, you know, they would want me to come home. And... (John Kiriluk)
- Q. Don't wanna go there? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Okay. (Det. Carr)

- A. I don't. I mean, I've seen, I've seen both worlds. And I like my own world (Inaudible). (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. And, drove hard teams and... (John Kiriluk)
- Q. Is that what you do for a living? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Well, what do you do for a living? (Det. Carr)
- A. Whatever I can, right now. 'Cause... (John Kiriluk)
- Q. Kinda jack of all trades? (Det. Carr)
- A. Yeah. Uh, I'm a local Ford union carpenter. (John Kiriluk)
- Q. Oh. (Det. Carr)
- A. You know, but uh, (simultaneous inaudible conversation) (John Kiriluk)
- Q. Any jobs out there like that? (Det. Carr)
- A. There's some. There's some but it, they don't pay nothin. Uh, I sell pagers uh, do odd jobs, go to yards and pull parts for people. Uh, find people. (John Kiriluk)
- Q. Okay. Uh... (Det. Carr)
- A. Kinda like an entrepteneur rright now. Because I'm debating whether or not I'm gonna move. (John Kiriluk)
- Q. Outta Salt Lake or just outta your apartment? (Det. Carr)
- A. Out of Utah, go back to my dad's... (John Kiriluk)
- Q. Which is? (Det. Carr)
- A. My grandma, West Virginia. (John Kiriluk)
- Q. Oh, West Virginia? (Det. Carr)

- A. I haven't seen my grandma since I was sixteen. My mom's (Inaudible). Mom's gettin ready to move in May. (John Kiriluk)
- Q. (Sigh) (Det. Carr)
- A. My dad ain't doin to good with my stepdad. And plus I have a lot of pride so I can't go askin mommie for help or.. (John Kiriluk)
- Q. Tell me what you think happened to Mike? I mean, you know more background about this than I do. Okay? Uh.. (Det. Carr)
- A. He was on (Inaudible) (John Kiriluk)
- Q. Okay. Because of this accusation? Is that a speculation or have you gotten information? (Det. Carr)
- A. I, this is the first I've heard of 'em. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. I mean, Mike was suppose to call me and he hadn't called me this weekend, which is typical since we got in that little argument, you know? He says he's gonna call me and then two or three days later he'll call me. So I just figured everything was all hunkey-dorrie. Now you're tellin me he was found dead in the foothills. (John Kiriluk)
- Q. Yeah. He was. Uh, Sergeant keeps pagin me. Let's go ahead and take just take a quick break. Uh, we're going to pause in this interview while I return a phone call to Sgt. Townsend. (Det. Carr)
- Q. After approximately a four minute conversation, we'll be starting back up this uh, report. Uh, let's, let's stop this for right now, okay, because I've been honest with ya, okay? And hopefully, you've been honest me, right? (Det. Carr)
- A. I have. (John Kiriluk)
- Q. Okay. Okay. But right now we've been keepin within the scope of the murder of Brandon, er, uh, I'm, I'm sorry, Mike. Mike Brown. Okay. Uh, we're, we're gonna change gears here a little bit and uh, I want ya to remember that the tape is going, okay? I want you to remember of those rights that we talked about earlier. Do you remember those? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)

- Q. Okay. Uh, back at the apartment there has been some narcotics found and some drugs found, okay? Also at the apartment, while they were there, people came up and were startin to make buys, right, right then and there while, while uh, my Sergeant and some other uh, cops were there. Okay? Now this happened inside your apartment. You're going to be arrested for that, okay? Now, do, do you want any, make any statements in regards to that. Keep, keeping in mind everything about you do have the right to remain silent. You do have the right to have to have an attorney, things of that nature. (Det. Carr)
- A. Are you arresting me (Inaudible) (John Kiriluk)
- Q. Okay, well, it's going on inside your apartment. Okay? It's your apartment as well as Chance's apartment, okay? And it's, I, you don't have to make any sort of hand to hand buys but obviously when people are comin over there, when the cops are there and makin, and may...you know, comin up to do hand to hand buys, there's somethin goin on that you probably know about. Okay? And like I said, don't, don't, I, I'm not gonna bullshit you on anything, okay? And I don't expect you to bullshit me on anything either, I'd rather you just tell me you don't wanna say anything than treat me like I'm stupid. Okay? (Det. Carr)
- A. I had no idea (Inaudible) (John Kiriluk)
- Q. Is that, (simultaneous inaudible conversation) (Det. Carr)
- A. (simultaneous inaudible conversation) being arrested for it. (John Kiriluk)
- Q. Is that fair? Well, I, I, I'm tellin you why. I, I, I told you why. (Det. Carr)
- A. Is this the only place (Inaudible). (John Kiriluk)
- Q. Okay, well, like, like I said, the, the reason being, okay? And, if nothin else, respect my honesty here, 'cause I'm not... (Det. Carr)
- A. Your tellin me... (John Kiriluk)
- Q. I'm not gonna... (Det. Carr)
- A. You explain it, you explain it... (John Kiriluk)
- Q. I'm not gonna bullshit ya here. That's what the call was about, okay? The Sergeant said while they were there they've arrested four people there. Four people that have come up there, tried to make buys, someone came up with a bottle of pills, things of that nature, okay? But apparently there was some dope found actually at

your apartment. Okay? Now that in and of itself is enough for possession. Bare minimal possession. There's not sayin that you're dealin, okay? But that's bare minimal possession. Okay? And that's, and that's what you'd be lookin at right now, so again, do you want to make any statements in that regard to anything that goes, went on in your apartment that has to do with the drugs that were found there? (Det. Carr)

A. I don't. (John Kiriluk)

Q. Okay. (Det. Carr)

A. Okay. (John Kiriluk)

Q. Are, are any of those drugs yours? (Det. Carr)

A. There's some that's mine. (John Kiriluk)

Q. Some, some are yours? (Det. Carr)

A. There's a little. (John Kiriluk)

Q. Did you deal in drugs? (Det. Carr)

A. I sold to friends every now and again. (John Kiriluk)

Q. But no large scale operation? No, I guess you'd say. (Det. Carr)

A. (Inaudible) (John Kiriluk)

Q. What is it that you sold to your friends? (Det. Carr)

A. (Inaudible) speed. (John Kiriluk)

Q. Mostly speed. Marijuana? (Det. Carr)

A. Yeah. (John Kiriluk)

Q. That's it? No coke? (Det. Carr)

A. Some...no. (John Kiriluk)

Q. No coke? Okay. Uh... (Det. Carr)

- A. Unless it's, you know, coke-crank. (John Kiriluk)
- Q. Coke-crank? (Det. Carr)
- A. Speed. (Inaudible) (John Kiriluk)
- Q. Uh, is Chance involved in any of that there at the house? (Det. Carr)
- A. I don't want to comment on that one. (John Kiriluk)
- Q. Okay. That, that's fair. I'd, I'd much rather you do that than, than, like I said, treat me like I'm stupid. So, I mean, that, that's fair enough there uh, we, we won't ask any more questions in that regard, okay? Uh, you know, I realize there's a drug trick now and it's, it's common. It's probably a lot more common than just, you know, little Miss Mormon thinks, you know what I mean, that she reads about in the paper. It's probably more common than what I think, is, is that a fair statement? I mean, it, it goes on a lot, I mean, I whether it's large scale or small scale or just personal use, like you said, you know, a little bit of, a little bit of marijuana, toke in a bowl every now and again.. (Det. Carr)
- A. I hardly ever do that. (John Kiriluk)
- Q. You don't touch marijuana? Or very rarely? (Det. Carr)
- A. Very rarely. It puts me to sleep. (John Kiriluk)
- Q. Okay. Well, yeah, or could give ya the munchies. Uh... (Det. Carr)
- A. (Inaudible) right to sleep. Helps my back, 'cause sleep. (John Kiriluk)
- Q. Okay. Uh, the stuff they found, is it gonna be in your room? (Det. Carr)
- A. There might be. (John Kiriluk)
- Q. There might be? (Det. Carr)
- A. There might be a little somethin in my (Inaudible). (John Kiriluk)
- Q. Nothing big? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. What, what would they find if it was going to be in your room? (Det. Carr)

- A. There might be like a little bit of speed. (John Kiriluk)
- Q. Little bit of speed? (Det. Carr)
- A. Yeah. Or.... (John Kiriluk)
- Q. When you say "a little", how much are we talkin? (Det. Carr)
- A. Okay. I don't know, I mean, I don't know if I had (Inaudible) little baggies in there or not, maybe half of ki. (John Kiriluk)
- Q. Ki at the most? (Det. Carr)
- A. Yeah. (Inaudible) like that and maybe a little bit of smoke in a bowl. (John Kiriluk)
- Q. Okay. Were you expecting anyone to come over to your house to sell tonight to a friend or anything? (Det. Carr)
- A. No. (John Kiriluk)
- Q. You weren't expecting anyone? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Okay. So if they came over, that would have been on their own initiative, just, just to see? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Right? (Det. Carr)
- A. Yup. (John Kiriluk)
- Q. They wouldn't have been coming there like at your request or anything? (Det. Carr)
- A. Nope. (John Kiriluk)
- Q. Okay. I, I think we've got that squared now and outta the way. Okay? Uh... (Det. Carr)
- A. I don't call 'em, either. (John Kiriluk)
- Q. Okay. Okay. (Det. Carr)

- A. (Inaudible) (John Kiriluk)
- Q. Well, like I told ya, my main concern is a murder, okay? Uh, that, that's my main concern right now. (Det. Carr)
- A. (Inaudible) or something? (John Kiriluk)
- Q. Yeah. Well, don't think I haven't thought about it. Uh, let's go ahead again, take a small pause. Do you have any problem with that? I need to return a phone call. (Det. Carr)
- Q. After another approximate three to four minute delay uh, this will restart the interview. Uh, that was a page from Deputy Steve Winters, with the Sheriff's Office Narcotics Unit. Uh, Deputy Winters wished to speak with John in regards to the narcotics that were found at, at John and Chance's apartment. John did you talk to Deputy Winters on the phone? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. Okay. And as I understand it, Deputy Winters was asking for uh, consent to search your apartment, is that correct? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. Okay. Did you give him consent to do that? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. Okay. Uh, again, I and I, kinda wanna move on from this a little bit. You're probably preoccupied now. But before we, and we can go back to this, if you like, if you have more questions that you wanna ask me uh, you, you can do that. But is there anything else that you can think of or any way that you might be able to help us in solving Mike Brown's murder? Is, is there any way that you can start askin on the streets, start uh, lookin around... (Det. Carr)
- A. (simultaneous inaudible conversation) be lookin for who? (John Kiriluk)
- Q. Okay. Do you think Hoagie knows exactly what happened? (Det. Carr)
- A. It's s..., it's a lead, you know? (John Kiriluk)
- Q. It's, it's a possibility? (Det. Carr)

- A. You know what I mean? (John Kiriluk)
- Q. If you were in my shoes, is that where you would start? (Det. Carr)
- A. That's a place to go. I don't know where to start. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. 'Cause like I said, no one I know... (John Kiriluk)
- Q. Yo....did you kill Mike Brown? (Det. Carr)
- A. No, I did not. (John Kiriluk)
- Q. Did uh, Damon kill Mike Brown? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Okay. You are uh, saw him alive, Mike Brown alive, between eleven thirty to eleven forty-five, Thursday night and that was when he was gonna meet Hoagie. (Det. Carr)
- A. I dropped him off up there at uh, Dees. (John Kiriluk)
- Q. Dees. On 94th and 7th? (Det. Carr)
- A. Yup. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. (Inaudible) real name? He suppose to meet him up there. (John Kiriluk)
- Q. And your opinion is he got iced, to use the vernacular, uh, for an accusation of a quarter pound of missing prope dope, right? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. (Sigh) Okay, let's, let, let's go back to what's happenin at your apartment, right now? Oh, okay? Well, is there anything you wanna ask me about what's goin on right now? Okay? Let's (Inaudible) (Det. Carr)
- A. No, I know what's going on. (John Kiriluk)

- Q. Okay, I've kinda, it, ya, ya have to understand your, your cooperation is beneficial, okay? It's, that's just the way it is. It always is more beneficial to be cooperative than uh, not to be, okay? And I, and I appreciate that and it will reflect accordingly. Uhm, what, what questions do you have? Anything that you can think of? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Well, yeah. Uhm,... (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. This, this was not my intention, okay? When I came to talk to you tonight. Uh, I hope you understand that? (Det. Carr)
- A. (Inaudible) people... (John Kiriluk)
- Q. Well... (Det. Carr)
- A. Some people, they don't care about anybody else. (John Kiriluk)
- Q. Well, I, that was not my intention. (Det. Carr)
- A. No, I'm not blamin ya. (John Kiriluk)
- Q. Okay? My intention was uh, to talk to you because well, you were the last one seen with Mike that night and that's always the place where you start, you and Damon. (Det. Carr)
- A. (Inaudible) that night. (John Kiriluk)
- Q. Uh, what's that? (Det. Carr)
- A. I lose a friend and my house. (John Kiriluk)
- Q. Uh, is there anything else you wanna say, right now? Okay? Uh, let's go ahead and end this interview. Time is, hey Mannie, what time is it? Time is 0143. (Det. Carr)

THIS IS AN INTERVIEW BEING CONDUCTED AT THE METROPOLITAN HALL OF JUSTICE, 6TH FLOOR. 03/26/96. TIME IS 0350 HOURS. I'M DETECTIVE CARR, ALSO PRESENT IS DETECTIVE STEVE WINTERS, ALSO PRESENT IS JOHN KIRILUK. K-I-R-I-L-U-K.

- Q. Uh, John, we've, we'd already spoken earlier, correct? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. Okay. And uh, you'd given me a statement at that time? Correct? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. Okay. Uh, what I wanna do on, on this tape, is re-read you your rights, are you comfortable in that? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. You have the right to remain silent. Anything you say, can and will be used against you in the court of law. You have the right to talk to a lawyer before any questioning. If you cannot afford to hire a lawyer, one will be appointed to you free of charge. You can decide at any time to exercise these rights and not make any statements. Uh, do you understand each one of those rights that I have read to you? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. John, we found out that Thursday night you left in Damon's pick-up truck uh, it was you, Damon, Autumn and Chablis. Along with uh, along with Mike. Is that correct? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. Let's uh, why don't you tell me where you went from there? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Did you go out towards Bluffdale? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Went to Riverton? (Det. Carr)

- A. (Inaudible) (John Kiriluk)
- Q. Did you meet up with Hoagie out in Riverton? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. It was not Hoagie? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Who did you meet up with? (Det. Carr)
- A. (Inaudible) I have no idea (Inaudible) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. 'Cause I was on this, Dude. (John Kiriluk)
- Q. Okay. Did Damon know where to go to pick up these two Mexicans? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Did you know where to go to pick up these two Mexicans? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. Where did you meet 'em then? (Det. Carr)
- A. It's on uh, 27 West (Inaudible) 27th South there's some little houses (Inaudible) ... (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. (Inaudible) West (Inaudible) South. (Inaudible) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. And they were in a car (Inaudible) (John Kiriluk)
- Q. What kind of car? (Det. Carr)
- A. (Inaudible) it's the white Ford Espire. (John Kiriluk)

- Q. Oh, a white Ford Espire? Okay. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. What happened at that point? (Det. Carr)
- A. (Inaudible) they stopped (Inaudible) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. But there was (Inaudible) (John Kiriluk)
- Q. From that address? (Det. Carr)
- A. (Inaudible) (Inaudible) Denny's on 6th South (Inaudible). (John Kiriluk)
- Q. Okay. 'Bout the one on 94th and 7th? (Det. Carr)
- A. Yeah. (Inaudible) (John Kiriluk)
- Q. Why did you drive there? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Well let me put it this way, did you know what was going to happen to Thumper? Did you have an idea? (Det. Carr)
- A. (Inaudible) I just (Inaudible) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. And then (Inaudible) (John Kiriluk)
- Q. These two Mexicans did? Can you start? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. What'd they say? (Det. Carr)

- A. They said they (Inaudible) ... (John Kiriluk)
- Q. And then... (Det. Carr)
- A. He was beaten (Inaudible). (Inaudible) and then they gave 'em (Inaudible) a branch and said (Inaudible). (John Kiriluk)
- Q. So... (Det. Carr)
- A. So bright-eyed and ... (John Kiriluk)
- Q. Only... (Det. Carr)
- A. (Inaudible) was a little bare spot (Inaudible) (John Kiriluk)
- Q. Uh have, have you talked to Detective Winters about a lab? (Det. Carr)
- A. I don't (Inaudible) gettin (Inaudible) just one lab. (Inaudible) (John Kiriluk)
- Q. Is this Hoagie? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Who is it? (Det. Carr)
- A. That one right there, the guy's named (Inaudible) is Shaun. (John Kiriluk)
- Q. Shaun who? (Det. Carr)
- A. I don't know his last name. (Inaudible) Hoagie. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. (Inaudible) leave it there because his boss (Inaudible). (Inaudible) I swear to God (Inaudible). (Inaudible) the boss, it's probably (Inaudible) you (Inaudible). (John Kiriluk)
- Q. (Inaudible) (Det. Winters)
- Q. Sure, sure, go free. Go free. (Det. Carr)
- Q. When you went with friends to friends to Riverton, you took, what was the victim's name again, Darren? (Det. Winters)

- Q. Mike Brown. (Det. Carr)
- Q. Mike. When you guys took Mike out there, you stopped at one, 12700 hundred and 27th West, and you dropped him off. Who was it who picked Mike up, originally, to take him to get in the car with you guys? Were you guys all at you one place? Where did that originate from? (Det. Winters)
- A. Me and Damon went out to Mike's house. (John Kiriluk)
- Q. Yeah, but you, you got picked up at Mike's house on uh, 370 East 9400 South. Uh, when, when you guys picked him up, was it your intent to take him to Riverton then and address him with these guys? (Det. Winters)
- A. I didn't really have a (Inaudible). (John Kiriluk)
- Q. Well how did you know to meet these guys in Riverton, then? (Det. Winters)
- A. (Inaudible) we was passin down and they called and I tried everything I could (Inaudible) (John Kiriluk)
- Q. Who called? (Det. Winters)
- A. (Inaudible) about three Mexicans. (John Kiriluk)
- Q. Three Mexicans called you at home? (Inaudible) they got a (Inaudible) at your home? Okay. (Det. Winters)
- A. (Inaudible) (John Kiriluk)
- Q. So they simple said, you know, get a hold of Mike... (Det. Winters)
- A. Uh huh. But they never told me (Inaudible) they (Inaudible) down (Inaudible) (John Kiriluk)
- Q. Okay. Excuse my ignorance, 'cause I don't understand what (Inaudible) down means. (Det. Winters)
- A. The grapevine. (John Kiriluk)
- Q. The grapevine? (Det. Winters)
- A. The grapevine and then he was callin me 'cause he had some tails on him that were calling down at his parents. White. And I'm tryin to figure out who's throwing what

into the grapevine (Inaudible). Just laughed him off. So I tried to get him and I tried to rectify the problem. (Inaudible) call (Inaudible) they come up here. (Inaudible) (John Kiriluk)

Q. So what did Mike say when he got in the car with ya? Weren't you lucky? Did he say, "I don't wanna go." ? Any words said? (Det. Winters)

A. "I don't want any trouble." He got outta the back (Inaudible) he didn't say (Inaudible). (John Kiriluk)

Q. (Inaudible) who originally made the contact with the Mexicans (Inaudible)? Who talked to 'em first you or Damon, was it? (Det. Winters)

Q. Damon. (Det. Carr)

Q. Damon. Who was he talkin to when you first drove up? (Det. Winters)

A. There was no words. (John Kiriluk)

Q. No words? (Det. Winters)

A. They just drove where it's, I was under the impression that he was going to be fucked up. (John Kiriluk)

Q. Fucked up? (Det. Winters)

A. I didn't do it to him. (Inaudible) I told ya that. (John Kiriluk)

Q. Did, does Damon's mother still live on Edgewater Drive? (Det. Carr)

A. Who? (John Kiriluk)

Q. Damon's mother. Still live on Edgewater Drive? (Det. Carr)

A. I don't (Inaudible) remember. (John Kiriluk)

Q. Okay. Uh, I, I can appreciate the fact that you got a little nervous when we brought in that branch. Okay? Because you know where that branch goes. Uh, that branch was broken off a tree.... (Det. Carr)

A. (Inaudible) (John Kiriluk)

Q. And uh, that tree... (Det. Carr)

- A. (Inaudible) (John Kiriluk)
- Q. Is right next to where the body was found. Okay? So that can be very damning evidence uh, when it, when it comes to that. I can take that branch right there and go out to that tree, 'cause the tree's still there, and I can, I'll be able to match it in no time. 'Cause what it looks like, is, and correct me if I'm wrong from this, uh, Mike tried to run away. In fact, it looks like he tried to climb up into the tree to get away from these people. And I'm gonna use the word, "these people". I'm not gonna use the word, "Mexicans", right now. Okay? He tried to get away and uh, as he wo... he held onto those branches as someone pulled him from those trees. Now, let's go back a little bit further, okay? I know that you talkin to a couple of people, okay, and this is not just come from one source, you were pissed at Mike because actually Mike's a runner for you. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Okay? Now, I'm gonna quite the bullshit here, okay, 'cause this is hard facts right now. This is murder and this is a meth lab. Okay? Mike's a runner for you, okay? And you were pissed at Mike because you thought and him and Hoagie ripped you off and you even made the statement, so bold, as to say, "If I find out that Mike did rip me off of that pro, I'm gonna kill him." Okay? You made that statement that bold. (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. I did. (John Kiriluk)
- Q. So, so you're mad. (Det. Carr)
- A. I didn't. (John Kiriluk)
- Q. So you're mad at him, okay? And now you realize, after we've started talkin to some more people you need to change your story. Okay? John, I can put you at that scene. You have no idea what I recovered at that scene, okay? And I can tie you into that scene now with that little tree branch. It's a souvenir. Souvenirs are very damning evidence. No one, no one, including me is gonna buy this story about the Mexīcāns. Okay? (Det. Carr)
- A. Okay. (John Kiriluk)
- Q. Now, I sat here... (Det. Carr)

- A. Okay. (John Kiriluk)
- Q. And I've tried to play along, as best as I can, but understand something, I've been doin murders for four fucking years. I know when I'm getting the shit thrown in my face. This is one of the biggest shit piles I've run across yet. It now, don't, don't say a word for a minute. Okay? What I wanna tell you is that is so much Hollywood it stinks. Okay? There is no meaning of cars with lights flashing on and off and things comin down the grapevine and havin this guy walk to his own execution. Okay? And that's not gonna match up. (Det. Carr)
- A. (simultaneous inaudible conversation) (John Kiriluk)
- Q. That's not gonna match up, okay. Bare minimum. Bare minimum. You watched Mike get killed. Bare minimum. Okay? We're callin Damon in. Do you think Damon's story is even gonna come close to this? (Det. Carr)
- A. No. (John Kiriluk)
- Q. It's not gonna come close to this. You're right. And Damon was there. He was in the truck with ya all night together. You think Autumn's story is gonna come close to this? (Det. Carr)
- A. No. (John Kiriluk)
- Q. And, to top it all off, do you think Chablis', she's there in jail right now, she's a scared little girl. Do you know why she's so scared? (Det. Carr)
- A. Uhhh.. (John Kiriluk)
- Q. She's scared because she knows what happens out there and she doesn't know what to do right now. She doesn't know whether to piss or, or what. She's that scared. Okay? Now, (Det. Carr)
- A. Well, what (simultaneous inaudible conversation) (John Kiriluk)
- Q. I don't care, yeah, everyone's scared here, okay? But we, but let me tell ya, I've got a dead man and I keep gettin closer and closer. Closer and closer. Now, I agree, I don't think he was killed by one person. I think it was two people that killed him. Or, at least, one person roughed him up, another person killed him. John, this is your chance, right here and now. Right here and now... (Det. Carr)
- A. (Inaudible) (John Kiriluk)

- Q. I wanna know, did you rough him up or did you kill him? Those, those are your two choices, right here and now. Right here and now you've got to say (simultaneous inaudible conversation) (Det. Carr)
- A. I, I hit him twice. (John Kiriluk)
- Q. You've got to save anything you can do. You punched him twice? (Det. Carr)
- A. I punched him twice. (John Kiriluk)
- Q. Once in the eye, right? (Det. Carr)
- A. Yup. (John Kiriluk)
- Q. Okay, knocked him silly, right? (Det. Carr)
- A. No. That was done at my house. I hit him once in my house and I hit him once in the truck. (John Kiriluk)
- Q. Did Damon kill him? You gotta come clean, John. You gotta come clean right here and now. Okay? Because I'm not gonna buy the Mexican story. All right? (Det. Carr)
- A. Huh. I'm (simultaneous inaudible conversation) you...(John Kiriluk)
- Q. No, no, no, no, no, no, no, no.... (Det. Carr)
- A. Are you gonna keep them off of me? (John Kiriluk)
- Q. I, first off, I need to know what the truth is. Is Damon involved in this Mexican Mafia? Is that what we're talkin? (Det. Carr)
- A. I don't know if he is or not. (John Kiriluk)
- Q. Is, is... (Det. Carr)
- A. All I know is news (simultaneous inaudible conversation) right now. (John Kiriluk)
- Q. You told me (simultaneous inaudible conversation). You need to tell me right now, there's, there's two people that did this to him. Two people that did this to him. (Det. Carr)
- A. I didn't (simultaneous inaudible conversation) (John Kiriluk)

- Q. One roughed him up. Okay, I'm tellin ya, I'm tellin ya right now. One roughed him up, the other killed him. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. What is it gonna be? Okay? If you (Inaudible) (Det. Carr)
- A. I didn't take him for a walk. (John Kiriluk)
- Q. Did Damon take him for a walk? Near that tree? John, this is deep now. This is deep. Okay? In fact, if this is a pit, you're down here. The only way you can go now is up. Okay? It's not gonna seem like much but you gotta start tellin the truth here, Man. You gotta start tellin the truth sooner or later. Who took him for the walk? Was it Damon? John, it's a simple, yes or no, Man. It's a simple, yes or no. (Det. Carr)
- A. It wasn't me. (John Kiriluk)
- Q. Okay. Let's move on. Okay? I'm not askin if it was you. I'm asking was it Damon. There's five people that leave in this truck, right? Two girls, boom, they're drivin. Autumn is drivin and uh, Chablis is in the front passenger, then there's three guys in the back. That's you, that's Damon and that's Mike. Okay? You just admitted that you've, you hit Mike once at the apartment and once in the truck. You're tellin me things that are consistent with what I found, so that means that there wasn't some involvement there. Okay? (Det. Carr)
- A. (Inaudible) I hit him. When I.... (John Kiriluk)
- Q. I.... (Det. Carr)
- A. Was at the house. I hit him in the eye. When I hit him in the truck it was way out there. (John Kiriluk)
- Q. In the back of the head right? (Det. Carr)
- A. Nope. (John Kiriluk)
- Q. Where? (Det. Carr)
- A. I knocked out his front tooth. (Inaudible) His (Inaudible) (John Kiriluk)
- Q. That's right. Yeah, his tooth was missing. (Det. Carr)

- A. That's the only two times I hit him. And Damon took him out of the truck... (John Kiriluk)
- Q. Does Damon... (Det. Carr)
- A. They went walkin and I don't know. (John Kiriluk)
- Q. What did Damon tell you when he got back? (Det. Carr)
- A. I said, "Here." (John Kiriluk)
- Q. What did Damon tell you.... (Det. Carr)
- A. He said... (John Kiriluk)
- Q. When he got back? (Det. Carr)
- A. He said, "Here." and he threw me the branch. (John Kiriluk)
- Q. How did Damon say he killed him? (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. What, tell me? (Det. Carr)
- A. He said, "It's done." (John Kiriluk)
- Q. I know. I know. And how did he say he did it? He's not gonna throw, he's not gonna throw you a memento and not tell you exactly how it was done. How did he say he did it? (Det. Carr)
- A. Had him say a prayer, hit him in the back of the (Inaudible) head, he stuck him. (John Kiriluk)
- Q. With a knife? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. What kind of knife? (Det. Carr)
- A. Gerber dagger. (John Kiriluk)
- Q. A Gerber dagger? (Det. Carr)

- A. (Inaudible) (John Kiriluk)
- Q. Where's the knife now? (Det. Carr)
- A. I honestly don't know. (John Kiriluk)
- Q. Where can we find the knife? Is it gonna be in your apartment? (Det. Carr)
- A. It's not my knife? (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. It's, it's (simultaneous inaudible conversation) (John Kiriluk)
- Q. I didn't say that. (Det. Carr)
- A. It's their own knife. (John Kiriluk)
- Q. It's whose own knife? (Det. Carr)
- A. It's Damon and Autumn's own knife. (John Kiriluk)
- Q. And it's a Gerber dagger? (Det. Carr)
- A. Yeah. (John Kiriluk)
- Q. What size? What are we lookin at? (Det. Carr)
- A. Uh, (Inaudible) like seven and a half. (John Kiriluk)
- Q. How, how big's the blade? (Det. Carr)
- A. Blade's probably uh, like this, four and a half, five inches. (John Kiriluk)
- Q. What clothes was Damon wearin? That black shirt and a black thing that says, "Heavy Metal Shop" on the back? Was that the clothes that he was wearin? Does he still have those clothes? (Det. Carr)
- A. As far as I know. (John Kiriluk)
- Q. Did he change? (Det. Carr)
- A. (Inaudible) he spent the night and they got arrested thereafter. (John Kiriluk)

- Q. Spent the night where? (Det. Carr)
- A. At my house. (John Kiriluk)
- Q. See, af...what time did this happen? (Det. Carr)
- A. I, I honestly don't know. (John Kiriluk)
- Q. Okay. Think back. What time did this happen? (Det. Carr)
- A. We got home at three-thirty. (John Kiriluk)
- Q. Did you guys go right home right after that? (Det. Carr)
- A. Yeah. We took we took an extra whatever, (Inaudible) or whatever. (John Kiriluk)
- Q. Did Chablis see this happen? (Det. Carr)
- A. No. (John Kiriluk)
- Q. Is that why she's so scared? She knows what happened though. (Det. Carr)
- A. She knows what happened. (John Kiriluk)
- Q. How'd you guys know about those hills out there? (Det. Carr)
- A. They knew about 'em. (John Kiriluk)
- Q. When you say "they", who's they? (Det. Carr)
- A. Autumn and Damon. (John Kiriluk)
- Q. They knew about the hills? (Det. Carr)
- A. Yes. (John Kiriluk)
- Q. They knew where to go? (Det. Carr)
- A. (Inaudible) she grew up out there. She got married at fourteen and she moved out but she lived out there for a long while. (John Kiriluk)
- Q. Did Damon do this because he thought that Mike had ripped off that pro? (Det. Carr)

- A. I don't know if he did that uh, (Inaudible) me or if he did that when (Inaudible). I don't know. See he was followin Mike there when they to get (Inaudible). (John Kiriluk)
- Q. Okay. (Det. Carr)
- A. (Inaudible) (John Kiriluk)
- Q. Did Damon, did Damon tell you what he was goin out there to do? (Det. Winters)
- A. He was takin him out there to scare the hell out of him. (John Kiriluk)
- Q. Boy, he did that, didn't he? I think, I don't think there's any argument about that. (Det. Winters)
- A. He was gonna go out there.... (John Kiriluk)
- Q. I'll be right back (Inaudible) (Det. Carr)
- A. He was gonna go out there and play with (Inaudible), probably rough him up. And I said, "I want him (Inaudible) Mike's." (Inaudible) before I hit him the first time, I asked him three times, I said, "Where's (Inaudible)?" (John Kiriluk)
- Q. So then you smacked him? (Det. Winters)
- A. Yes, I did. (John Kiriluk)
- Q. And that's how you were (Inaudible)? (Det. Winters)
- A. Yes (Inaudible) (John Kiriluk)
- Q. And then you smacked him again in the truck? (Det. Winters)
- A. (Inaudible) that's on the way out there. Was in, to knock him out (Inaudible) because he (Inaudible) he set down... (John Kiriluk)
- Q. Tell me what he said when you guys, how, how did you go about makin the decision that you were gonna go for a ride? Who made that decision? (Det. Winters)
- A. (Inaudible) (John Kiriluk)
- Q. Okay. And, and obviously Mike didn't say, "Okay, let's go for ride." What did he say? (Det. Winters)

- A. Mike is that passive. His, his tag was Thumper 'cause he's (Inaudible)... (John Kiriluk)
- Q. Uh huh. (affirmative) (Det. Winters)
- A. And when Damon said, "Go like this." .357 and .22 and... (John Kiriluk)
- Q. .357 and .22... (Det. Winters)
- A. I mean, I'd probably find myself quite intimidated too. (John Kiriluk)
- Q. So he didn't say, "Get in the fuckin truck." What did he say? What were Damon's words? (Det. Winters)
- A. He said, "All right then. You're not gonna answer us, let's go out there to Hoagie's house." (John Kiriluk) ✓
- Q. So they assumed, so he assumed that you guys were going out to Hoagie's house? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. And you guys instead went to the hills? (Det. Carr)
- A. Uh huh. (affirmative) (John Kiriluk)
- Q. What did he say when you guys kept goin past Riverton? (Det. Winters)
- A. Didn't say nothin. And... (John Kiriluk)
- Q. Was he in the back of the truck? (Det. Carr)
- A. And the place where the gallon was given to Mike is uh, right off 2700 West and East, a hundred and twenty-six (Inaudible) South. (John Kiriluk)
- Q. Uh, a gallon of what? (Det. Carr)
- A. E2, Supposedly. I don't know. It was a blue suitcase locked. And I was told that he rang out down there. (John Kiriluk)
- Q. Okay. Uh, what I wanna do is end this here, okay? (Det. Carr)
- A. I wanna end all of this, Man. (John Kiriluk)

ADDENDA B

RICHARD P. MAURO (5402)
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FILED
DISTRICT COURT
96 JUL -1 PM 4:20
THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY
BY SU
DEPUTY CLERK

IN AND FOR THE THIRD JUDICIAL DISTRICT

STATE OF UTAH, SALT LAKE COUNTY

STATE OF Utah,	:	MOTION TO SUPPRESS
	:	EVIDENCE DISCOVERED AS A
Plaintiff,	:	RESULT OF ILLEGAL WARRANTLESS
	:	SEARCH
v.	:	
JOHN PETER KIRILUK,	:	CASE NO. 961900938FS
	:	
Defendant.	:	JUDGE DAVID S. YOUNG

Comes now the defendant, John Peter Kiriluk, by and through his attorneys of record, Richard P. Mauro and Janet Miller, and moves this Court to suppress all evidence discovered as a result of the police officer's illegal, warrantless entry into his apartment located at 466 East Woodland Avenue, #4, in Salt Lake County. See Payton v. New York, 445 U.S. 573 (1975). The illegal search conducted here was accomplished without a warrant, without voluntary consent, and without exigent circumstances. State v. Laracco, 794 P.2d 460 (Utah 1990).

ISSUES PRESENTED

(1) The police lacked both probable cause, see State v. South, 885 P.2d 795 (Utah App. 1994) (probable cause defined as a "fair probability that contraband or evidence

of a crime will be found"), and exigent circumstances to justify the entry and search. State v. Beavers, 854 P.2d 9 (Utah App. 1993)("exigent circumstances are circumstances that would cause a reasonable person to believe that entry . . . was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.") (quoting United States v. McConney, 728 F.2d 1195, 1199, (9th Cir.) cert. denied 469 U.S. 824 (1984); see State v. Larocco, 794 P.2d 460 (Utah 1990)

(2) A search following consent is only valid if "(1) the consent was voluntarily given; and (2) the consent was not obtained by police exploitation of the prior illegality." State v. Ham, 910 P.2d 433, 438 (Utah App. 1996); accord State v. Arroyo, 796 P.2d 684,688 (Utah 1990). Mr. Kiriluk contends that the search of his apartment was not based on voluntary consent, see State v. Whittenback, 621 P.2d 103, 106 (Utah 1980); Ham, 910 P.2d at 438-439; State v. Bobo, 803 P.2d 1268 (Utah 1990), and that the police request for consent was obtained by exploitation of a prior illegal entry into Mr. Kiriluk's apartment.¹ see Ham, 910 P.2d at 438; Arroyo, 796 P.2d at 687.

BURDEN OF PROOF

The state bears the burden of showing that a warrantless entry was justified by the existence of probable cause and exigent circumstances. Larocco, 794 P.2d 460. The State must also prove that consent was both voluntary and not the result of the exploitation of a prior illegality. Ham, 910 P.2d at 438; Arroyo, 796 P.2d at 687. Mr. Kiriluk respectfully requests that the court suppress all evidence discovered as a result of the illegal entry and

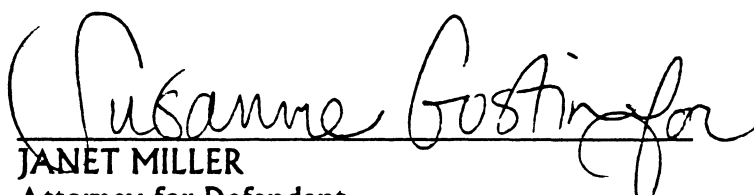
¹ The initial entry into Mr. Kiriluk's apartment was illegal. Once inside the apartment, the police discovered illegal substances and potentially incriminating items. Mr. Kiriluk was then transported to the police station where the police then sought his consent to search the apartment.

search.

DATED this 28 day of June, 1996.

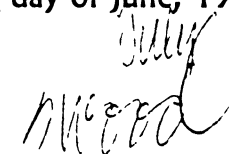


RICHARD P. MAURO
Attorney for Defendant



JANET MILLER
Attorney for Defendant

MAILED/DELIVERED a copy of the foregoing Motion to Suppress Evidence
Discovered as a Result of Illegal Warrantless Search to the District Attorney's Office, 231
East Fourth South, Salt Lake City, Utah 84111 this 1 day of June, 1996.



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ADDENDA C

1 APARTMENT; IN THIS CASE, THE DRUGS? IS THAT RIGHT?

2 A. RIGHT.

3 Q. AND HE TOLD YOU THAT HE DIDN'T WANT TO MAKE
4 A STATEMENT. IN FACT, HE INVOKED HIS MIRANDA
5 RIGHTS; DIDN'T HE.

6 A. NOW THAT, I DON'T RECALL.

7 Q. LET ME SEE IF I CAN REFRESH YOUR MEMORY.

8 A. POINT IT OUT TO ME.

9 Q. OKAY. AT THE TOP OF PAGE 34. AND I HAVE
10 GOT IT HIGHLIGHTED, IF YOU CAN READ TO TO YOURSELF.

11 A. OKAY.

12 Q. YOU HAVE LOOKED AT THE BOTTOM OF 33 AND THE
13 TOP OF PAGE 34?

14 THE COURT: DOES ANYONE HAVE A COURTESY
15 COPY OF THAT?

16 MR. MAURO: I THINK SO. WE DO. IT'S
17 HIGHLIGHTED.

18 THE COURT: THAT'S OKAY. THANK YOU.

19 Q. (BY MR. MAURO) DETECTIVE, I GUESS YOU'VE
20 READ THAT?

21 A. YES. I HAVE READ THAT, AND THAT IS --

22 Q. THAT REFRESHES YOUR RECOLLECTION?

23 A. THAT IS EITHER A MISPRINT-- BECAUSE I EVEN
24 CONFIRMED WITH HIM. HE AGREED TO TALK TO ME ABOUT
25 IT.

1 Q. THAT WASN'T MY QUESTION, THOUGH.

2 A. I'M SORRY. IT DOES SAY, "I DON'T" RIGHT
3 THERE, YES.

4 Q. WE HAVE TALKED AT THE PRELIMINARY HEARING A
5 COUPLE OF TIMES ABOUT THIS STATEMENT, HAVEN'T WE?

6 A. YES.

7 Q. TALKED ABOUT YOU LISTENING TO THE TAPE?

8 A. I WENT OVER IT, YES.

9 Q. AND THE INDICATION THAT YOU GAVE US AT THE
10 PRELIMINARY HEARING IS THAT YOU'D LISTENED TO THE
11 TAPE TWICE?

12 A. CORRECT.

13 Q. AND YOU MADE A REPRESENTATION UNDER OATH
14 THAT THE TRANSCRIPT IS ACCURATE?

15 A. RIGHT.

16 Q. AND WE WERE CONCERNED BECAUSE SOME OF THE
17 PARTS OF THE TRANSCRIPT WERE INAUDIBLE; IS THAT
18 CORRECT?

19 A. YES.

20 Q. YOU INDICATED THAT YOU MADE SOME SUBSEQUENT
21 EFFORTS, BECAUSE OF THE INAUDIBLE PARTS, TO CORRECT
22 THE TRANSCRIPT?

23 A. I TRIED, YES.

24 Q. YOU'VE HAD AN OPPORTUNITY TO LISTEN TO THE
25 TAPE A NUMBER OF TIMES?

1 A. TWICE.

2 Q. TWICE, TO MAKE THE APPROPRIATE CORRECTIONS?

3 A. YES.

4 Q. AND THAT --

5 A. ONCE -- I LISTENED TO IT INITIALLY, AND
6 THEN WE HAD IT ENHANCED OR TRIED TO HAVE IT
7 ENHANCED.

8 Q. AND THE DISCUSSION AT THE BOTTOM OF PAGE 33
9 AND THE TOP OF PAGE 34 IS BASED -- IS TALKING ABOUT
10 CHARGING MR. KIRILUK WITH POSSESSION?

11 A. CORRECT.

12 Q. AND THAT WOULD BE POSSESSION OF AN ILLEGAL
13 SUBSTANCE FOUND IN THE APARTMENT?

14 A. CORRECT.

15 Q. WHICH WOULD HAVE BEEN A FELONY?

16 A. CORRECT.

17 Q. AND YOU HAVE INDICATED THAT THAT WAS WHAT
18 YOU HAD BEEN LOOKING AT RIGHT NOW. "SO, AGAIN, DO
19 YOU WANT TO MAKE ANY STATEMENTS IN THAT REGARD?
20 ANYTHING THAT GOES ON WITHIN YOUR APARTMENT THAT HAS
21 TO DO WITH DRUGS THAT WERE FOUND THERE?" WAS THAT
22 YOUR STATEMENT?

23 A. THAT WAS MY STATEMENT.

24 Q. WHAT WAS MR. KIRILUK ANSWER, AS WRITTEN ON
25 PAGE 34?

1 A. WELL, AS IS WRITTEN ON PAGE 34, HE SAYS, "I
2 DON'T."

3 Q. "I DON'T." AND THAT WAS INDICATING HE
4 DOESN'T WANT TO MAKE ANY STATEMENTS?

5 A. WELL, IN REFERENCE TO THAT, YES.

6 Q. AND THEN THERE IS SOME SUBSEQUENT QUESTIONS
7 THAT YOU BEGIN ASKING HIM ABOUT THE DRUGS THAT WERE
8 FOUND IN THE APARTMENT; IS THAT CORRECT?

9 A. UH-HUM. (AFFIRMATIVE.)

10 Q. AND YOU QUESTIONED HIM A LITTLE BIT ABOUT
11 DRUGS AND WHAT WAS FOUND AND WHO WAS LIVING THERE,
12 THINGS LIKE THAT?

13 A. CORRECT.

14 Q. SUBSEQUENT TO HIM SAYING -- I DON'T SEE
15 WHEN HE HAD THE PHONE CONVERSATION WITH MR. WINTERS
16 ABOUT SEARCHING THE APARTMENT; IS THAT RIGHT?

17 A. I COULDN'T TELL YOU UNLESS I READ ALL THE
18 WAY THROUGH IT.

19 Q. OKAY. AND YOU CAN LOOK AT PAGE 37. THAT'S
20 WHERE YOU REITERATE THE DISCUSSION ABOUT THE DELAY.
21 IN THE MIDDLE OF PAGE 37?

22 A. YES.

23 Q. AND SO IS IT -- IT WOULD BE ACCURATE NOW TO
24 STATE THAT AFTER MR. KIRILUK SAID, "I DON'T," THAT'S
25 WHEN HE HAD THE CONVERSATION WITH MR. WINTERS?

1 A. AS IT'S TYPED IT SAYS, "I DON'T." BUT I
2 REMEMBER HE ANSWERED IN THE AFFIRMATIVE.

3 OTHERWISE, I WOULD NOT HAVE ASKED HIM
4 ANY FURTHER QUESTIONS ABOUT IT. I KNOW MIRANDA, AND
5 I KNOW THAT WHEN SOMEONE INVOKES --

6 Q. ARE THERE ANY OTHER MISTAKES THAT YOU ARE
7 AWARE OF THAT YOU MADE IN THIS CASE?

8 A. I DON'T CONSIDER THAT A MISTAKE. I
9 CONSIDER IT TO BE A POSSIBLE OVERSIGHT.

10 Q. ARE THERE SOME OTHERS ERRORS IN THE
11 TRANSCRIPT?

12 A. POSSIBLY. I TRIED TO LISTEN TO IT AS
13 CLOSELY AS I COULD.

14 Q. YOU KNOW THAT MR. WINTERS MADE THE PHONE
15 CALL FROM JOHN'S APARTMENT; IS THAT RIGHT? IS THAT
16 CORRECT?

17 A. WELL, I CALLED BACK TO SARGEANT TOWNSEND'S
18 PHONE NUMBER.

19 Q. WAS HE THERE AT THE APARTMENT?

20 A. I GUESS SO.

21 Q. YOU DON'T KNOW THAT?

22 A. I DON'T KNOW.

23 MR. MAURO: IF I MAY JUST HAVE A
24 MOMENT, YOUR HONOR.

25 THE COURT: YOU MAY.

1 MR. MAURO: I DON'T HAVE ANY FURTHER
2 QUESTIONS.

3 THE COURT: LET'S TAKE A RECESS PRIOR TO
4 REDIRECT.

5 (COURT IN BRIEF RECESS NOW AT 10:10 A.M.)

6 (COURT RESUMES SESSION 10:20 A.M. WITNESS
7 RESUMES STAND.)

8 THE COURT: ALL RIGHT. THANK YOU. YOUR
9 REDIRECT?

10 MR. STOTT: THANK YOU, YOUR HONOR.

11

12 REDIRECT EXAMINATION.

13 BY MR. STOTT:

14 Q. WHY DIDN'T YOU TAKE THE BRANCH.

15 A. BECAUSE I LEFT THIS FOR SARGEANT TOWNSEND
16 TO DO.

17 Q. WAS THAT WHY YOU POINTED IT OUT TO HIM?

18 A. THAT'S WHY I POINTED IT OUT TO HIM. MY
19 MAIN CONCERN AT THE TIME WAS NOT TO COLLECT EVIDENCE
20 OR ANYTHING LIKE THAT. I JUST WANTED TO GET A
21 STATEMENT FROM MR. KIRILUK.

22 Q. YOU RECOGNIZED IT AS SOMETHING THAT WAS
23 CONNECTED TO THE CASE, OR POSSIBLY CONNECTED?

24 A. YES.

25 Q. AS EVIDENTIARY VALUE?

1 A. YES. THAT'S WHY I MADE A MOTION, TO MAKE
2 SURE THAT THAT SARGEANT TOWNSEND KNEW THAT I WAS
3 POINTING IT OUT. AND I GOT A CONFIRMATION.

4 Q. YOU EXPECTED HIM TO PICK IT UP?

5 A. YES.

6 Q. GOING TO THAT PAGE 347, IS THAT A CORRECT
7 RESPONSE, OR IS THAT SOMEHOW A TRANSCRIPTION ERROR?

8 A. THAT WAS NOT A CORRECT RESPONSE. AS A
9 MATTER OF FACT, THE RESPONSES THAT OCCUR RIGHT AFTER
10 THAT ARE AFFIRMATIVE.

11 Q. WHAT WOULD BE THE CORRECT RESPONSE? DO YOU
12 REMEMBER?

13 A. HE SAID, "I DO."

14 MR. STOTT: THANK YOU. THAT'S ALL.

15

16 RECROSS-EXAMINATION

17 BY MR. MAURO:

18 Q. THESE ARE THE ORIGINALS THAT YOU HAD
19 PROVIDED TO ME?

20 A. I SUPPOSE.

21 MR. MAURO: MAY I APPROACH THE WITNESS,
22 YOUR HONOR?

23 THE COURT: YOU MAY.

24 Q. (BY MR. MAURO) I'M HANDING YOU WHAT'S BEEN
25 MARKED AS DEFENSE ONE AND DEFENSE TWO. DO YOU

1 AND HE GETS THERE A LITTLE BIT LATER. SO WHEN YOU
2 TAKE INTO ACCOUNT THE TIME THEY WERE THERE, THAT'S
3 REASONABLE.

4 DURING THAT TIME OFFICER TOWNSEND IS
5 LOOKING FOR PEOPLE IN THE APARTMENT. THERE WAS
6 ABSOLUTELY NO SEARCH, NO CHECKING THE PLACE,
7 ABSOLUTELY NO SEARCH. HE WAITED UNTIL WINTERS CAME.
8 WINTERS DIDN'T MAKE A SEARCH, HE GETS PERMISSION. I
9 I THINK THERE'S NO DOUBT, EXCEPT FOR MAYBE WHAT
10 HAPPENED ON PAGE 34, THAT WHEN WINTERS TALKED TO HIM
11 IT WAS CLEARLY EXPLAINED WHY HE WAS THERE, WHO HE
12 WAS, WHAT HE WANTED TO DO. HE DIDN'T HAVE TO GIVE
13 PERMISSION. WINTERS GETS PERMISSION, THEN THE
14 SEIZURE OF THE DRUGS AS A RESULT OF THAT PERMISSION.

15 THE COURT: WELL, ALL RIGHT. ANYTHING
16 FURTHER YOU WISH TO REPLY?

17 MR. MAURO: JUST BRIEFLY, JUDGE.

18 THE COURT: YOU MAY.

19 MR. MAURO: I THINK THE DUTY, WHEN THERE
20 IS AN INVOCATION OF MIRANDA, EVEN IF MIRANDA HAS
21 BEEN GIVEN PREVIOUSLY, IS AT THE VERY LEAST TO
22 CLARIFY. IF THERE'S AN INVOCATION OF MIRANDA, THE
23 DUTY THAT WE ALL WOULD RECOGNIZE WOULD BE TO STOP
24 QUESTIONING. BUT AT THE VERY LEAST, HE HAS A DUTY
25 TO CLARIFY. AND CERTAINLY THE TAPE IS GOING TO

1 SPEAK FOR ITSELF ON THAT ISSUE.

2 THE SECOND ISSUE IS, IF THERE IS A PRIOR
3 ILLEGALITY ON THE SEARCH, IF THEY ARE THERE
4 ILLEGALLY, IF -- ON THE MIRANDA ISSUE IF HE'S NOT
5 INVOKED HIS MIRANDA, IF THERE IS VALID CONSENT, IS
6 IT SUFFICIENTLY ATTENUATED FROM THE ILLEGALITY IN
7 THIS CASE? IS INVOKATION OF MIRANDA? AND I WOULD
8 NOTE THAT WHEN YOU LOOK AT THE TAPE, PAGE 34, AND
9 WHERE'S THERE'S DISCUSSION ABOUT MIRANDA, PAGE 37 IS
10 WHERE THERE IS A DISCUSSION OF THE CONSENT. IT'S
11 TWO, TWO AND A HALF PAGES LATER.

12 I KNOW THE ONE UTAH CASE TALKS ABOUT
13 ATTENUATION BETWEEN THE PRIOR ILLEGALITY, THEN
14 SOMETHING THAT MAY HAVE INTERVENED, AND THEN
15 SUBSEQUENT. IN THIS CASE WE DON'T BELIEVE THERE IS
16 SUFFICIENT ATTENUATION.

17 WITH REGARD TO GOING IN AND TALKING, I
18 GUESS I CAN NEVER UNDERSTAND. WHY DON'T THE POLICE
19 SAY, "JOHN, COME ON OUT HERE. LET'S TALK TO YOU OUT
20 HERE." THEY DIDN'T DO THAT. HE OPENED THE DOOR,
21 THEY WENT IN. STATE VERSUS HAM TALKS ABOUT THE VERY
22 SAME THING. AND IN THAT CASE THEY QUOTE SOME OF THE
23 TRANSCRIPT. "QUESTION: DID THE DEFENDANT MAKE ANY
24 VERBAL RESPONSE AT ALL TO YOU WHEN YOU TOLD HIM YOU
25 NEEDED TO LOOK IN THE REFRIGERATOR?"

1 THE COURT: YES SEE, THAT'S VERY
2 DIFFERENT, THOUGH THEY WERE ALREADY IN THE HOUSE.
3 AND THEY ASKED -- I THINK IT WAS AGENT HILLAM WHO
4 SAID, "WE NEED TO LOOK IN THE REFRIGERATOR. OKAY?"
5 DIDN'T WAIT FOR A RESPONSE, PULLED THE REFRIGERATOR
6 OPEN AND LOOKED IN THE REFRIGERATOR.

7 "WE NEED TO LOOK THE FREEZER. OKAY?"
8 THAT'S THE WAY THEY'RE DOING IT. THEY ARE JUST
9 GOING AHEAD. HE'S STANDING BACK THERE WATCHING IT.
10 AND I THINK WE ALL KNEW THERE WERE CHALLENGES WITH
11 THAT SEARCH AT THE TIME.

12 BUT I DON'T SEE THAT THE OFFICERS HERE WERE
13 GOING FORWARD AND PRESSING THIS. WHAT THEY DID WAS,
14 THEY SAW IN PLAIN VIEW THE BEAKERS. AND YOU USUALLY
15 DON'T HAVE LABORATORY BEAKERS IN YOUR KITCHEN TO
16 PREPARE FOOD. AND SO THEY SEE THOSE AS
17 PARAPHERNALIA TO PREPARE PRECURSERS, AT LEAST, TO
18 DRUGS, IF NOT THE FINAL PRODUCT. SO I KNOW THE HAM
19 CASE REASONABLY WELL.

20 MR. MAURO: I UNDERSTAND. I GUESS THE
21 ANALOGY THAT I WAS GOING TO MAKE IS THAT SOME OF THE
22 ANALOGY -- OR SOME OF THE TESTIMONY THAT WAS GIVEN
23 BY THE OFFICERS IS STRIKINGLY SIMILAR WHEN THEY SAY,
24 "NO, HE WAS COMPLETELY COOPERATIVE, ALTHOUGH HE
25 DIDN'T SAY ANYTHING." I GUESS THAT'S THE ANALOGY

1 THAT I WANT TO DO MAKE, JUDGE.

2 THE COURT: I SEE.

3 MR. MAURO: WAS THE QUESTION. I THINK THE
4 ANSWERS TO THE QUESTIONS ARE SOMEWHAT SIMILAR TO THE
5 ANSWERS THAT WERE GIVEN HERE, AS FAR AS WHAT JOHN
6 SAID. HE WAS COOPERATIVE, HE STEPPED BACK, HE
7 DIDN'T RESIST IN ANY WAY. AND UNDER THOSE
8 CIRCUMSTANCES, I THINK THE COURT FOUND THERE WASN'T
9 VOLUNTARY CONSENT.

10 OH, THE FINAL THING THAT I JUST SIMPLY WANT
11 TO MENTION TO THE COURT WAS THAT THE CASE OF STATE
12 VERSUS BEAVERS TALKS ABOUT THIS QUOTE-- THEIR OWN
13 WORD, "EXIGENCIES" BY GETTING INTO THE APARTMENT BUT
14 REMAINING IN THE APARTMENT, BY LOOKING AROUND THE
15 ROOMS OF THE APARTMENT, AND MR. KIRILUK IS NOT
16 THERE.

17 THEY CREATE THEIR OWN EXIGENCIES. THAT
18 GIVES THEN GIVES THEM A BASIS TO EITHER ASK FOR
19 CONSENT OR GET A WARRANT TO DO WHATEVER ELSE THEY'RE
20 GO TO DO TO DISCOVER THE EVIDENCE. AND IT'S OUR
21 POSITION IN THIS CASE THAT THAT IS EXACTLY WHAT THEY
22 HAVE DONE BY REMAINING IN THE APARTMENT.

23 THE COURT: OKAY. ANYTHING FURTHER WE
24 NEED TO TAKE UP? I'M GOING TO TAKE THIS MATTER
25 UNDER ADVISEMENT AND REVIEW THE TAPE. AND I'M GOING

1 TO INVITE YOU BACK AT 1:30 FOR A RULING. SO WE'LL
2 TAKE CARE OF IT THIS AFTERNOON. YOU NEEDN'T BRING
3 UP MR. MUMFORD. MR. MUMFORD IS NOT INVOLVED IN THIS
4 ACTION FURTHER, SO HE CAN REMAIN IN CUSTODY.

5 WE'LL RETURN AT 1:30 COURT'S IN RECESS.

6 (COURT IN RECESS NOW AT 12:00 P.M.)

7 (COURT RESUMES SESSION AT 1:30 P.M.)

8 THE COURT: ALL RIGHT. THE RECORD MAY
9 SHOW WE ARE CONVENED IN THE PRESENCE OF MR. KIRILUK,
10 AND THE COURT HAS HAD THE OPPORTUNITY TO REVIEW THE
11 TAPES AND THE EXHIBITS. I'LL RETURN THOSE TO THE
12 CLERK SO THAT THAT THEY CAN BE PLACED WITH THE
13 EXHIBITS.

14 THE COURT WOULD REFER TO THE TYPED
15 TRANSCRIPT PREPARED, I ASSUME, BY THE LEGAL
16 DEFENDERS ASSOCIATION, OF THE CONVERSATION HAD
17 BETWEEN OFFICER CARR AND MR. KIRILUK. IT'S ON PAGE
18 34.

19 MR. MAURO: THAT WAS PREPARED BY THE
20 DETECTIVES.

21 THE COURT: WHOMEVER. I JUST SAW YOUR
22 CARD AT THE TOP OF IT, SO I DIDN'T KNOW WHO PREPARED
23 IT. YOUR CARD APPEARS ON THE TOP OF MY MATERIALS.

24 MS. MILLER: I MUST HAVE LEFT IT THERE.
25 YOU NOW HAVE MR. MAURO'S HOME PHONE NUMBER.

1 THE COURT: THANK YOU. I'LL RETURN THIS
2 COPY TO YOU ANYWAY. IT'S YOUR COPY THAT I WORKED
3 WITH.

4 SO IN ANY EVENT, IT WAS APPARENT TO ME IN
5 HEARING THE TEXT, OR THE MATERIAL, THAT OBVIOUSLY IT
6 IS VERY DIFFICULT TO TRANSCRIBE SUCH A DOCUMENT AS
7 THIS. I DID HEAR IT THE SAME AS YOU HEARD IT.
8 HOWEVER, THE CONTEXT OF IT CHANGES THE WHOLE MEANING
9 OF IT. THE CONTEXT IS A CONTEXT WHEREIN OFFICER
10 CARR HAS BEEN PAGED BY HIS SARGEANT, JERRY TOWNSEND,
11 AND HAS BEEN INFORMED, AND SO INFORMED MR. KIRILUK,
12 AND THERE FOUR PERSONS UNDER ARREST AT THE KIRILUK
13 APARTMENT.

14 THEY WERE THERE FOR DRUGS. THEY'D COME IN,
15 AND ONE FELLOW HAD EVEN PUT A BOTTLE OF PILLS IN THE
16 OTHER PERSON'S POCKET, AS WAS TESTIFIED TO BY
17 OFFICER TOWNSEND. AND SO OFFICER CARR CAME BACK TO
18 THE CONVERSATION AND TOLD MR. KIRILUK THAT HE WAS
19 GOING TO BE PLACED UNDER ARREST FOR WHAT WAS GOING
20 ON AT HIS HOME.

21 AND THEN IN THE CONTEXT OF WHAT WAS ASKED
22 OF HIM, HE ASKED HIM AGAIN, ON THE TOP OF PAGE 34--
23 WELL, I HAVE READ IT ALL BEFORE INTO THE RECORD SO I
24 WILL ONLY READ THE LAST SENTENCE. HE SAYS, "AND
25 THAT'S IT. AND THAT'S WHAT YOU'RE LOOKING AT RIGHT

1 NOW. SO AGAIN, DO YOU WANT TO MAKE ANY STATEMENTS
2 IN THAT REGARD?"

3 I VIEW "IN THAT REGARD" TO REFER TO IN
4 REGARD TO WHAT'S GOING ON AT HIS HOME, AT HIS
5 APARTMENT AT THAT TIME. "TO ANYTHING THAT GOES OR
6 WENT ON IN YOUR APARTMENT." IN FACT, THERE WAS
7 FURTHER EVIDENCE OF THAT CONTEXT. AND THEN HE
8 CONTINUES, "THAT HAS TO DO WITH IS THE DRUGS THAT
9 WERE FOUND THERE."

10 SO ALL HE'S TALKING ABOUT IS, "DO YOU HAVE
11 ANY COMMENTS TO MAKE AS TO WHAT'S GOING ON IN YOUR
12 APARTMENT RIGHT NOW?" AND HE SAYS, "I DON'T." AND
13 THE REMAINDER OF THE CONTEXT THEN INDICATES THAT
14 HE'S MORE THAN WILLING TO RESPOND.

15 ON PAGE 37 OF THE TRANSCRIPT, AFTER MR.
16 KIRILUK HAS HAD A CONVERSATION WITH THE DETECTIVE--
17 WHAT'S HIS NAME, THAT WAS THE LAST WITNESS?

18 MR. STOTT: WINTERS.

19 THE COURT: WINTERS. AFTER HE'S HAD A
20 CONVERSATION WITH WINTERS TO ASK WHETHER HE'S
21 WILLING TO APPROVE THE SEARCH, AND HE APPROVES THE
22 SEARCH TO WINTERS IN A TELEPHONE CONVERSATION, THEN
23 BACK ON THE RECORD HERE, OFFICER CARR SAYS, "DID YOU
24 TALK TO DEPUTY WINTERS--" AND I'M READING FROM PAGE
25 37, NO LINE NUMBER -- "ON THE PHONE?" KIRILUK SAYS,

1 "YES." AND THEN THE QUESTION, "AND AS I UNDERSTAND
2 IT, DEPUTY WINTERS WAS ASKING FOR CONSENT TO SEARCH
3 YOUR APARTMENT; IS THAT CORRECT?"

4 KIRILUK RESPONDS, "YES."

5 "QUESTION: OKAY. DID YOU GIVE HIM CONSENT
6 TO DO THAT?

7 KIRILUK RESPONDS, "YES."

8 THE FOUR QUESTIONS THAT YOU INDICATED TO
9 MR, MR. MAURO, THAT I NEEDED TO CONSIDER IN
10 CONSIDERING WHETHER TO SUPPRESS THE EVIDENCE IN THIS
11 CASE WERE, FIRST, WHETHER THERE WAS CONSENT TO ENTER
12 THE APARTMENT INITIALLY, AND WHETHER THAT CONSENT
13 WAS VOLUNTARY.

14 THE COURT FINDS THAT BASED UPON THE
15 TESTIMONY OF THE OFFICERS, THERE BEING NOTHING IN
16 OPPOSITION THERETO, THAT IT WAS AN APPROPRIATE
17 ENTRY, THAT THE MR. KIRILUK DID NOT EVER DENY
18 ADMISSION, DID NOT EVER SHOW ANY BODY LANGUAGE TO
19 INDICATE THAT HE WAS DENYING. HE STEPPED BACK AND
20 OPENED THE DOOR TO ALLOW THEM TO ENTER, AND THEY
21 DID. AND I FIND NO EVIDENCE OF INVOLUNTARY CONDUCT
22 IN THAT REGARD.

23 THE SECOND QUESTION: DID THE POLICE
24 REMAIN, AND BY DOING SO EXCEED THE SCOPE OF THEIR
25 PERMISSION? AND I FIND THE ANSWER TO THAT IS,

1 LIKEWISE, NO. THEY CERTAINLY DID REMAIN, BUT THEY
2 DID NOT EXCEED THE SCOPE OF THE PERMISSION. THE
3 OFFICERS, BY THE TIME THAT MR. KIRILUK WAS TAKEN
4 WITH MR. CARR TO THE POLICE STATION, HAD THEN
5 OBSERVED IN THAT PLAIN VIEW DRUG PARAPHRNALIA, AND
6 THEIR REMAINING WAS APPROPRIATE.

7 THIRD QUESTION, WAS A LATER CONSENT GIVEN
8 VOLUNTARILY, AND THE ANSWER TO THAT IS CLEARLY YES.
9 THE CONTEXT OF THE DISCUSSION SHOWS THAT. DEPUTY
10 WINTERS TESTIFIED TO THAT. AND THEN MR. KIRILUK, ON
11 THE RECORD, REAFFIRMED THE VOLUNTARINESS OF HIS
12 CONSENT IN THE RECORDED CONVERSATION WITH DEPUTY
13 CARR.

14 AND THE FOURTH QUESTION, WAS THE BRANCH IN
15 PLAIN VIEW? AND THERE HAS BEEN NO TESTIMONY IN
16 DISPUTE OF THAT. OFFICER CARR OBSERVED IT
17 IMMEDIATELY AND GAVE A SIGNAL TO DETECTIVE TOWNSEND
18 AS TO THE BRANCH. DETECTIVE TOWNSEND INITIALLY WAS
19 THINKING THE BRANCH MAY BE MARIJUANA, BUT CERTAINLY
20 WHEN HE GOT CLOSER TO IT AND GIVE IT A BETTER
21 EXAMINATION HE COULD CLEARLY SEE THAT IT WAS
22 EVIDENCE THAT POTENTIALLY COULD RELATE TO THIS
23 OFFENSE. SO IT WAS IN PLAIN VIEW. IT WAS OBVIOUS
24 TO THEM WHEN THEY WALKED IN. IT WAS ON A SHELF AND
25 OBSERVABLE. AND SO THE COURT FINDS THAT THE

1 DEFENDANT'S MOTION TO SUPPRESS SHOULD BE AND THE
2 SAME IS HEREBY DENIED.

3 MR. STOTT, I'M GOING TO ASK YOU TO PREPARE
4 AN ORDER DENYING THE SUPPRESSION, SO THAT THERE IS
5 AN ORDER IN THE FILE. I WOULD ALSO ASK YOU TO
6 PREPARE AN ORDER THAT WILL GRANT THE SEVERANCE OF
7 THE TWO CASES.

8 MR. STOTT: I GET PUNISHED FOR LOSING NOW?

9 THE COURT: WELL, YOU MIGHT AS WELL HAVE
10 IT IN THE SAME ORDER, IN ONE ORDER WITH THE SAME
11 MATTERS IN BOTH.

12 THE CLERK BRINGS UP THE QUESTION AS TO EACH
13 FILE. SO LET'S SEE, I GUESS THAT RAISES THE
14 QUESTION. THE SUPPRESSION MOTION DIDN'T APPLY TO
15 BOTH?

16 MR. STOTT: NO, YOUR HONOR.

17 THE COURT: ALL RIGHT. I'LL ASK YOU,
18 THEN, MR. MAURO, TO PREPARE THE ORDER REGARDING
19 SEVERANCE, BECAUSE WE'LL NEED THAT IN A SEPARATE
20 ORDER. I WAS JUST GOING TO HAVE ONE ORDER, AND
21 PREPARE THAT FOR BOTH FILES SO IT'S ACCURATE. THEN
22 IF YOU, MR. STOTT, WILL PREPARE THE ORDER ONLY IN
23 RELATION TO SUPPRESSION FOR THE KIRILUK FILE.

24 MR. STOTT: THANK YOU.

25 THE COURT: AND JUST SO THAT WE MIGHT BE

1 AWARE OF IT, OUR TRIAL DATE FOR THIS IS NOW AUGUST
2 27; IS THAT CORRECT?

3 MR. MAURO: I BELIEVE THAT IS CORRECT.

4 THE COURT: AND THE PRETRIAL DATE IS THE
5 18TH OF AUGUST.

6 MR. STOTT: I HAVE THE 19TH, JUDGE.

7 THE COURT: YES. IT WOULD BE THE 19TH OF
8 AUGUST. YES, THAT'S THE MONTH. OKAY. SO WE'LL
9 ANTICIPATE THE MATTER WILL PROCEED AS NOW SCHEDULED.

10 MR. MAURO: THANK YOU, YOUR HONOR.

11 THE COURT: THANK YOU. COURT'S IN RECESS.

12 (PROCEEDINGS CONCLUDED AND COURT ADJOURNED
13 AT 2:05 P.M.)

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C E R T I F I C A T E

STATE OF UTAH

COUNTY OF SALT LAKE

I, GAYLE CAMPBELL, CERTIFIED SHORTHAND
REPORTER AND NOTARY PUBLIC FOR THE STATE OF UTAH,
CERTIFY:

THAT I AM AN OFFICIAL COURT REPORTER IN THE
THIRD JUDICIAL COURT OF THE STATE OF UTAH;

THAT I WAS PRESENT DURING THE ENTIRE
PROCEEDINGS IN THE BEFORE-ENTITLED CAUSE;

THAT THE PROCEEDINGS WERE REPORTED STENO-
GRAPHICALLY BY ME, AND WERE THEREAFTER TRANSCRIBED;

THAT SAID TRANSCRIPT CONSTITUTES TO THE
BEST OF MY ABILITY A TRUE AND COMPLETE RECORD OF THE
PROCEEDINGS HAD.

IN WITNESS THEREOF, I HAVE SUBSCRIBED MY
NAME AND AFFIXED MY SEAL THIS 10TH DAY OF APRIL,
1997.



GAYLE CAMPBELL, CSR, RPR

ADDENDA D

RICHARD P. MAURO, #5402
JANET MILLER, #6410
Attorneys for John Peter Kiriluk
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, #300
Salt Lake City, Utah 84111
(801) 532-5444

FILED
2019-08-19
SALT LAKE COUNTY
CLERK
BY Si

IN THE THIRD DISTRICT COURT, STATE OF UTAH
IN AND FOR SALT LAKE COUNTY, DIVISION I

STATE OF UTAH,	:	MOTION TO SUPPRESS CUSTODIAL
	:	STATEMENTS AND EVIDENCE
Plaintiff,	:	SEIZED AS A RESULT OF CUSTODIAL
	:	STATEMENTS
v.	:	
JOHN PETER KIRILUK,	:	CASE #961900938FS
Defendant.	:	JUDGE DAVID S. YOUNG


JOHN PETER KIRILUK, through his attorneys, RICHARD P. MAURO and JANET MILLER, hereby move this Court to suppress all statements made by John Kiriluk to the police relating to the above entitled matter. Those statements were made while Mr. Kiriluk was in custody. Mr. Kiriluk did not knowingly and voluntarily waive his Miranda rights. See Article I, § 12. Although he was read the Miranda admonition twice that evening, he did not voluntarily waive his rights and agree to speak with the police. See State v. Sampson, 808 P.2d 1100 (Utah App. 1990) (state's failure to show that defendant's waiver was "both intentional and made with full knowledge of consequences..." results in suppression of statement); Miranda, 384 U.S. at 458.

Additionally, Mr. Kiriluk invoked his Miranda rights during the course of the police

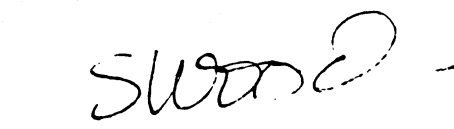
interrogation, informing the police that he did not wish to answer additional questions. Any answers to questions after the invocation of his Miranda rights should be suppressed. See State v. Troyer, 910 P.2d 1182, 1190 (Utah 1995) (holding that statements taken in violation of Miranda are inadmissible in state's case in chief). Alternatively, assuming that Mr. Kiriluk's statement that he chose not to speak with police was equivocal, the police still nonetheless must cease the interrogation to clarify Mr. Kiriluk's rights. State v. Sampson, 808 P.2d 1100 (Utah 1990). The police did not cease their interrogation; rather they continued questioning Mr. Kiriluk.

DATED this 7 day of August, 1996.


RICHARD P. MAURO
Attorney for Mr. Kiriluk


JANET MILLER
Attorney for Mr. Kiriluk

MAILED/DELIVERED a copy of the foregoing to the District Attorney's Office at
231 East 400 South, Salt Lake City, UT this 8 day of August, 1996.



ADDENDA E

Original

FILED DISTRICT COURT
Third Judicial District

APR 16 1997

1 IN THE THIRD JUDICIAL DISTRICT COURT
2 By S. O'Neil
3 IN AND FOR SALT LAKE COUNTY, STATE OF UTAH Deputy Clerk

4 THE STATE OF UTAH, :
5 PLAINTIFF, : CASE NO. 961900938
6 VS. :
7 JOHN PETER KIRILUK, : JUDGE DAVID S. YOUNG
8 DEFENDANT. :
9

10
11 REPORTER'S TRANSCRIPT
12 HEARING OF OCTOBER 22, 1996
13 BEFORE THE HONORABLE DAVID S. YOUNG
14
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22

23 FILED

24 REPORTED BY GAYLE B. CAMPBELL, CSR, RPR

JUL 14 1997

COURT OF APPEALS

970200-CA

000518

A P P E A R A N C E S

FOR THE STATE: ROBERT L. STOTT
 DEPUTY COUNTY ATTORNEY
 231 EAST FOURTH SOUTH
 SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT RICHARD P. MAURO, AND
 KIRILUK: JANET MILLER
 SALT LAKE LEGAL DEFENDERS ASSOC.
 424 EAST 500 SOUTH
 SALT LAKE CITY, UTAH 84111

FOR THE DEFENDANT
 MUMFORD: DAVID ANGERHOFER
 ATTORNEY AT LAW
 50 WEST BROADWAY
 SALT LAKE CITY, UTAH 84111

1
2 OCTOBER 22, 1996

SALT LAKE CITY, UTAH

3 P R O C E E D I N G S.

4 (COMMENCING AT 8:00 A.M.)

5 THE COURT: GOOD MORNING. THIS IS THE
6 TIME SET TO CONSIDER THE MATTERS OF STATE OF UTAH
7 VERSUS JOHN PETER KIRILUK AND DAMON MUMFORD. THE
8 CASES ARE 961900938 AND 939. THE MATTERS BEFORE THE
9 COURT TODAY INVOLVE THE DEFENDANTS' MOTIONS
10 REGARDING LIMINE AND OTHER MATTERS. YOU MIGHT TELL
11 ME HOW YOU WISH TO PROCEED.

12 MR. MAURO: JUDGE, RICHARD MAURO AND JANET
13 MILLER FOR JOHN KIRILUK. I THINK THE BEST WAY TO
14 PROCEED -- I THINK IT'S MOSTLY GOING TO BE ARGUMENT.

15 THE COURT: WHAT, I WAS THINKING IN TERMS
16 OF PROCEDURE. I WOULD ASSUME THAT SOME OF THE
17 MOTIONS THAT YOU MAY FILE MAY RELATE TO BOTH CASES.
18 I KNOW I HAVE SEVERED THE CASES FOR TRIAL, BUT I
19 ASSUME THEY ARE NOT SEVERED FOR ANY OF THE OTHER
20 MATTERS OF MOTIONS, AND THEY CAN BE ARGUED TOGETHER.

21 THE ONLY THING I WOULD SUGGEST IS THAT YOU
22 NOT DUPLICATE YOUR ARGUMENT AS MOVING PARTIES IF YOU
23 JOIN IN THEM, MR. ANGERHOFER, IF YOU SIMPLY JOIN.
24 IF YOU HAVE SOMETHING TO SUPPLEMENT THAT BRIEFLY,
25 THEN CERTAINLY YOU MAY.

1 MR. STOTT.

2 MR. STOTT: UNFORTUNATELY, AS YOU KNOW, I
3 WASN'T HERE LAST TIME, AND MY FILE WAS WRITTEN DOWN
4 THAT THIS IS A PRETRIAL CONFERENCE. I WASN'T AWARE
5 IT WAS SET FOR MOTIONS, AND I HAVE ANSWERED, I
6 BELIEVE, MOST OF THE MOTIONS.

7 THE COURT: YOU HAVE.

8 MR. STOTT: FRANKLY, I LEFT MY OTHER FILE
9 OVER IN MY OFFICE, AND I HAVE A TRIAL STARTING AT
10 9:15 TODAY. I SUPPOSED THIS TO BE, LIKE I SAY, AND
11 MY FILE SHOWS, THIS WAS JUST A PRETRIAL CONFERENCE,
12 AND NOT MOTIONS. I WASN'T AWARE OF THAT, AND I DO
13 HAVE A TRIAL.

14 THE COURT: I KNOW THAT YOU HAD THE INJURY
15 IN AUGUST THAT CONTINUED ALL OF THIS, SO YOU WEREN'T
16 AWARE OF THE DATES, PERHAPS. HOW LONG DO YOU
17 ANTICIPATE YOUR ARGUMENT TO LAST?

18 MR. MAURO: THEY WILL BE BRIEF. AND THE
19 FIRST ISSUE THAT I MIGHT WANTS TO ADDRESS IS THE
20 MIRANDA MOTION. AND I THINK, REALLY, WHEN I LOOK AT
21 THE STATEMENTS AGAIN LAST NIGHT I THINK THAT IT'S
22 MORE APPROPRIATELY A MOTION FOR A REDACTION OF PARTS
23 OF THE STATEMENT.

24 AND I'VE GOT THE ACTUAL PAGES THAT WE WANT
25 TO HAVE REDACTED, AND THEY'RE PARTS OF THE

1 TRANSCRIPT, AND THEY ARE MOSTLY DISCUSSIONS THAT
2 WERE HELD ON THE RECORD REGARDING THE DRUGS AND THE
3 THINGS THAT WERE FOUND IN HIS APARTMENT.

4 THE COURT: I KNOW YOUR MOTION IN LIMINE
5 IN PART RELATES TO THAT, AS WELL, BECAUSE THERE WILL
6 BE CONCERNS ABOUT HOW MUCH REGARDING THE DRUG
7 TRANSACTIONS CAN COME IN. AND OF COURSE MR. STOTT'S
8 RESPONSE HAS BEEN THAT THERE IS EVIDENCE NECESSARY
9 TO THIS TRIAL REGARDING MOTIVE, AND THAT THE MOTIVE
10 FOR THE KILLING WAS APPARENTLY A DRUG DEAL WENT
11 FOUL.

12 MR. MAURO: RIGHT.

13 THE COURT: SO.

14 MR. STOTT: IF I MAY, YOUR HONOR, AS FAR
15 AS THE STATEMENTS MADE BY MR. KIRILUK, I HAVE NO
16 INTENTION, REALLY, TO GO INTO THE FACT WHETHER OR
17 NOT HE WAS SELLING DRUGS OUT OF HIS HOUSE. IF
18 THAT'S THE PART OF THIS THAT YOU'RE WORRIED ABOUT, I
19 HAVE NO INTENTION OF GOING TO THAT PART OF IT, AS
20 FAR AS FROM HIS STATEMENT.

21 MR. MAURO: RIGHT.

22 THE COURT: I DON'T ASSUME YOU ANTICIPATE
23 INTRODUCING THE STATEMENT IN EVIDENCE. YOU
24 ANTICIPATE INTRODUCING THE WITNESSES TO TESTIFY IN
25 REGARD TO THE STATEMENT, I ASSUME?

1 MR. STOTT: YES. I HAD NO INTENTION OF
2 INTRODUCING THE STATEMENT ITSELF.

3 THE COURT: I WONDER IF THEY CAN BE DEALT
4 WITH AT TRIAL, AND IN THE MEANTIME MAYBE THE TWO OF
5 YOU COULD SIT DOWN AND GO OVER THE STATEMENTS AS TO
6 WHICH PARTS WOULD OR WOULD NOT BE OFFENSIVE OR
7 OBJECTED TO BY THE DEFENSE. AND MAYBE THE
8 PROSECUTION WOULD NOT BE USING THAT. I WOULD
9 ENCOURAGE YOU TO GO THROUGH ANY PICTURES, ALSO. I
10 KNOW YOU HAVE MADE MOTIONS IN REGARD TO THAT, AND
11 THERE MAY BE CERTAIN OF THOSE THE STATE DOESN'T WISH
12 TO OFFER.

13 I NOTE THE STATE HAS AGREED IN LIMINE AS TO
14 THE PRIOR FELONY RECORDS OF THE DEFENDANTS, OR AT
15 LEAST AS THEY MIGHT RELATE TO THIS PROCEDURE, UNLESS
16 THEY ARE BROUGHT UP AND ARE NECESSARY FOR REBUTTAL.
17 SO MUCH OF WHAT YOU MAY BE ASKING FOR ABOUT
18 DISCUSSIONS MAY BE AGREED UPON.

19 MR. MAURO: OKAY. THAT'S FINE. I WAS
20 JUST GOING TO SAY, I HAVE GOT THE PARTS OF THE
21 TRANSCRIPT MARKED THAT I THINK WOULD NOT BE
22 APPROPRIATE TO INTRODUCE, AND THE PAGE IS 32, AND I
23 HAVE GOT IT OUTLINED HERE ON MY COPY, AND I CAN SHOW
24 THAT TO MR. STOTT, PAGE 32 TO 37.

25 THE COURT: MR. STOTT HAS JUST INDICATED

1 THAT IF THEY RELATE TO THE DRUG MATTERS, SALES OUT
2 OF HIS HOME, ETC., HE'LL NOT INTRODUCE THOSE. ALL
3 RIGHT.

4 SO LET'S GO TO THE MATTERS THAT REMAIN IN
5 DISPUTE THAT ARE DIFFICULT FOR YOU.

6 MR. MAURO: OKAY. THOSE ARE ACTUALLY THE
7 MOTION IN LIMINE. MR. STOTT HAS AGREED THAT AT SOME
8 POINT HE'LL SIT DOWN AND LOOK AT THE EXHIBITS SO HE
9 WILL HAVE A GOOD IDEA OF WHAT THE PICTURES DEPICT.
10 AND IF THERE ARE ANY PROBLEMS, I'M ASSUMING THAT THE
11 COURT -- THERE ARE PHOTOGRAPHS OF THE CRIME SCENE
12 AND THE PHOTOGRAPHS DEPICT THE ACTUAL WOUNDS, THE
13 BODY SITTING THERE WITH THE BLOOD. WE WOULD OBJECT
14 TO THOSE COMING IN.

15 MR. STOTT: I HAVE NO PLANS TO INTRODUCE
16 ANY PICTURES THAT SHOW BLOOD, OR ANY AUTOPSY
17 PICTURES.

18 THE COURT: OKAY. WITH THAT KIND OF
19 AGREEMENT, I WONDER HOW WE OUGHT TO DRAFT A FINAL
20 ORDER IN REGARD TO YOUR MOTIONS. I SUPPOSE -- DO
21 YOU ANTICIPATE INTRODUCING SOME PICTURES?

22 MR. STOTT: I DO, YOUR HONOR. AND HE HAS
23 SEEN MOST OF THE ONES THAT I PLAN ON INTRODUCING. I
24 HAVE A FEW MORE SIMILAR PICTURES, AND HE'S WELCOME
25 TO LOOK AT THEM.

1 THE COURT: SHOULD WE CONSIDER THE MOTION
2 IN LIMINE AT THE VERY BEGINNING OF THE TRIAL?

3 MR. MAURO: THAT'S FINE.

4 THE COURT: THE MOTION IN LIMINE WILL
5 REMAIN OPEN UNTIL YOU'VE HAD AN OPPORTUNITY TO
6 DISCUSS THE EVIDENCE THAT WOULD BE IN REMAINING
7 DISPUTE.

8 MR. MAURO: THE OTHER PARTS OF THE MOTION
9 IN LIMINE WERE, I THINK MR. STOTT HAS AGREED THAT
10 PRIOR DRUG USE, PRIOR DRUG SALES OUT OF HIS HOME, OR
11 ALLEGED DRUG USE OR ALLEGED DRUG SALES HE WOULD NOT
12 BE INTRODUCING. I THINK THE REMAINING ISSUE IS HOW
13 MUCH OF THE ALLEGED TRANSACTION THAT OCCURRED IN
14 THIS CASE ALLEGEDLY BETWEEN MR. BROWN, THE DECEASED,
15 AND MR. KIRILUK SHOULD COME IN.

16 I THINK THE STATE'S THEORY WOULD BE THAT
17 THERE WAS A DEAL TO PURCHASE A SUBSTANCE CALLED
18 PROPENOL, WHICH WAS USED TO MANUFACTURE
19 METHAMPHETAMINE. MR. KIRILUK AND MR. BROWN, THE
20 DECEASED, TOGETHER PURCHASED THIS SUBSTANCE. THE
21 SUBSTANCE WAS GIVEN TO A THIRD PARTY FOR THE
22 MANUFACTURE OF METHAMPHETAMINE, AND THEN THERE WAS A
23 DISPUTE ABOUT MONEY, OR PRICE.

24 AT LEAST I THINK THAT'S THE STATE'S THEORY.
25 THE QUESTION BECOMES HOW MUCH OF THAT COMES IN. AND

1 WE'RE SOMEWHAT CONCERNED ABOUT THAT COMING IN,
2 OBVIOUSLY, BECAUSE THE PREJUDICIAL EFFECT THAT WOULD
3 HAVE ON THE JURY AND WHAT THEY WOULD -- THEY MIGHT
4 TAKE THAT EVIDENCE AND USE THAT IN A WAY OTHER THAN
5 IT IS INTENDED.

6 AND I THINK MR. STOTT WANTS TO ARGUE THAT
7 IT IS MOTIVE EVIDENCE. AND I GUESS WHAT WE'RE
8 LOOKING FOR IS SOME SORT OF LIMIT ON ANY WITNESS WHO
9 WOULD GET ON THE WITNESS STAND AND TESTIFY ABOUT
10 LARGE SCALE OPERATIONS THAT WERE GOING ON. OUR
11 OPINION IS SOME OF THOSE WITNESSES HAVE BIAS.

12 FOR INSTANCE, MR. MUMFORD'S WIFE WOULD
13 TESTIFY ABOUT SOME LARGER SCALE OPERATIONS THAN WHAT
14 ANY OF THE THE OTHER WITNESSES HAD TO TESTIFY ABOUT,
15 AND CERTAINLY IF THAT EVIDENCE IS GOING TO COME IN,
16 WE'D ASK THE COURT TO LIMIT THAT FOR THE NARROW
17 PURPOSE OF THE STATE'S MOTIVE EVIDENCE. AND THAT'S
18 THE POSITION WE WOULD TAKE.

19 THE COURT: OKAY.

20 MR. STOTT: MAY I ADDRESS THAT?

21 THE COURT: YES, CERTAINLY.

22 MR. STOTT: AS TO THE -- HE'S RIGHT, WE DO
23 HAVE EVIDENCE THAT GOES TO MOTIVE. AND OF COURSE,
24 AS THE COURT KNOWS, MOTIVE IS INSTRUCTIVE AS TO
25 INTENT AND IDENTIFICATION. WHY WAS MIKE BROWN

1 KILLED? WELL, THE REASON HE WAS KILLED WAS BECAUSE
2 MR. KIRILUK AND MIKE BROWN HAD AN AGREEMENT. MR.
3 KIRILUK HAD A PRECURSER TO METHAMPHETAMINE. IT'S
4 KNOWN BY VARIOUS NAMES AT THE TRIAL, P-2, PENANOL,
5 THINGS LIKE THAT. MR. KIRILUK ACQUIRED THIS FROM
6 SOME FRIEND OF HIS, ON CREDIT. HE OWED MONEY FOR
7 IT. HE WANTED THE TRANSFER IT, COOK IT INTO
8 METHAMPHETAMINE.

9 FOR WHATEVER REASON, HE GAVE THAT TO MIKE
10 BROWN, HIS ACQUAINTANCE, HIS FRIEND. MIKE KNEW A
11 COOK BY THE NAME OF OPIE. FOR WHATEVER REASON, MR.
12 KIRILUK NEVER GOT IT BACK. HE BECAME VERY UPSET,
13 VERY ANGRY. WHY? HE OWED THE MONEY TO SOME
14 UNSAVORY PEOPLE. HE WAS IN TROUBLE.

15 WITHIN A SHORT PERIOD OF TIME AFTER THAT,
16 HE FIGURED HE WASN'T GOING ABLE TO GET IT BACK.
17 THAT'S WHAT LED TO DIRECTLY TO THIS MURDER. IT WAS
18 BECAUSE OF HIS ANGER AT NOT BEING ABLE TO GET THE
19 LIQUID BACK OR HIS MONEY BACK.

20 THE WHOLE CASE CENTERS AROUND THAT. I
21 DON'T INTEND ON BRINGING EVIDENCE THAT THERE WAS
22 SALE OF METHAMPHETAMINES OR WHATEVER OUT OF THE
23 HOUSE. I DO INTEND ON BRINGING IN QUITE A BIT OF
24 EVIDENCE ABOUT THIS PARTICULAR OCCURRENCE, ABOUT THE
25 PRECURSER, OF HIS DESIRE TO HAVE IT COOKED AND THE

1 FACT THAT, FOR WHATEVER REASON, MIKE NEVER BROUGHT
2 IT BACK, AND THAT WAS THE MOTIVE FOR THE MURDER.

3 THE COURT: ALL RIGHT. NOW, WHY WOULDN'T
4 THAT BE RELEVANT AND ADMISSIBLE?

5 MR. MAURO: I'M JUST TALKING ABOUT GOING I
6 BEYOND THAT. OBVIOUSLY THE RULE TALKS TO MOTIVE
7 EVIDENCE BUT NOT BEYOND THAT.

8 THE OTHER THING I'M CONCERNED ABOUT IS HIS
9 ALLEGED THREATS THAT WERE MADE. IF THERE WERE
10 ALLEGED THREATS THAT WERE MADE, I THINK THOSE REALLY
11 OUGHT TO BE LIMITED TO THIS SPECIFIC ALLEGED
12 INCIDENT THAT OCCURRED.

13 ONE OF THE WITNESSES, AND I THINK IT WAS
14 MR. MUMFORD'S WIFE THAT TESTIFIED AT THE LAST
15 HEARING, INDICATED MR. KIRILUK MAY HAVE PARTICIPATED
16 IN SOME PRIOR VIOLENT ACTS. THAT WAS PART OF HER
17 TESTIMONY, AND THAT DOESN'T HAVE ANYTHING TO DO WITH
18 THIS SITUATION, DOESN'T HAVE ANYTHING TO DO WITH
19 MR. BROWN, AND I WOULD ASK THOSE BE LIMITED.

20 THE COURT: WELL, IT LOOKS TO ME LIKE
21 THOSE MATTERS ARE ALL MATTERS THAT CAN BE DEALT WITH
22 AT TRIAL. PRIOR SALES BY MR. KIRILUK WOULD NOT BE
23 RELEVANT TO THIS CASE, AS LONG AS IT WAS NOT
24 VIOLENCE OR THREATENED VIOLENCE IN RELATION TO
25 MR. BROWN AS TO THE CIRCUMSTANCES GIVING RISE TO

1 THIS ALLEGED OFFENSE.

2 SO I THINK EACH OF YOU WOULD KNOW THE
3 ADMISSIBILITY OR OBJECTIONABILITY OF THAT KIND OF
4 TESTIMONY BEING CONSIDERED. BUT I WILL ALLOW
5 TESTIMONY REGARDING OBTAINING OF THIS SUBSTANCE
6 KNOWN AS P-2 AND THE INTENT TO HAVE THAT COOKED AND
7 MADE INTO METHAMPHETAMINE, AND THE INVOLVEMENT OF
8 MR. BROWN AND MR. KIRILUK IN THAT TRANSACTION.

9 MR. MAURO: I THINK THE FINAL MATTER ON
10 THE MOTION IN LIMINE HAS TO DO WITH THE TREE BRANCH
11 FOUND AT MR. KIRILUK'S HOUSE OR APARTMENT. WE HAVE
12 RECEIVED SOME INFORMATION BACK FROM THE CRIME LAB
13 INDICATING THAT THEY WERE NOT ABLE TO MATCH THAT TO
14 A PART OF THE TREE WHERE THAT MAY HAVE BEEN TORN
15 OFF. AND WE THINK UNDER, THE CIRCUMSTANCES OF THAT
16 SITUATION, THE BRANCH SHOULD NOT BE ADMITTED.

17 THE COURT: WHAT'S YOUR POSITION ON THAT,
18 MR. STOTT?

19 MR. STOTT: I AM A LITTLE UNSURE OF WHAT
20 HE IS ARGUING. BUT BASICALLY THE MURDER OCCURRED A
21 VERY ISOLATED AREA IN THE SOUTH OF THE COUNTY, RIGHT
22 UNDERNEATH A PINE-- I SHOULDN'T SAY A PINE TREE,
23 BECAUSE I THINK IT WAS A SPRUCE TREE.

24 THE COURT: IS THIS THE CEDAR TREE THAT'S
25 BEEN SPOKEN OF PREVIOUSLY?

ADDENDA F

1 THAT AWAY?

2 MR. MAURO: NO, WE'LL KEEP THAT.

3 THE COURT: DOES IT HAVE ANY CONTENT ON
4 IT?

5 MS. MILLER: THAT'S THE ONE THAT SIMPLY
6 SAYS, "CONSULTATION AT TEN O'CLOCK."

7 THE COURT: I'LL TAKE IT BACK, IF YOU WANT
8 ME TO.

9 MR. MAURO: WE MAY NEED THAT.

10 THE COURT: YOU MAY WANT TO USE THE PAGE
11 YOU'VE TAKEN OUT?

12 MR. MAURO: DEPENDING ON THE EVIDENCE AT
13 TRIAL.

14 THE COURT: I'M HAVING A HARD TIME
15 UNDERSTANDING THIS.

16 MR. MAURO: DEPENDING UPON WHAT THE
17 WITNESSES SAY, IT MAY BECOME RELEVANT. IT'S
18 CERTAINLY HERE AND AVAILABLE. WE DON'T WANT IT IN
19 INITIALLY, BUT WE MAY WANT THE ENTIRE DOCUMENT IF IT
20 BECOMES RELEVANT, DEPENDING ON THE TESTIMONY OF THE
21 WITNESSES ON THE WITNESS STAND. AND I DON'T KNOW IF
22 IT WILL BECOME RELEVANT, OR NOT.

23 THE COURT: IS THERE ANYTHING ELSE WE NEED
24 TO DEAL WITH?

25 MS. MILLER: WE'D MAKE THE SAME OBJECTION

1 THAT, AGAIN, THE ITEMS THAT WERE FOUND IN MR.
2 KIRILUK'S HOUSE, THE GLASSWARE THAT ALLEGEDLY FOUND
3 IN THE HOUSE, THERE WAS APPARENTLY A SUBSTANCE FOUND
4 IN THE HOUSE. I DON'T HAVE ANY TOX REPORT THAT
5 INVOLVES ANY OF THOSE, BUT MY GUESS IS THAT
6 DETECTIVE WINTERS, AGAIN, IS GOING TO GET ON THE
7 WITNESS STAND AND SAY THERE WAS GLASSWARE. I
8 BELIEVE THE GLASSWARE WAS CONSISTENT.

9 WE HEARD AT THE PRELIMINARY HEARING THAT
10 THEY NEVER KEPT THE GLASSWARE, NEVER CHARGED JOHN
11 WITH POSSESSION OF DRUG PARAPHERNALIA, BUT DETECTIVE
12 WINTERS WOULD SAY IF HE WERE SWORN, THAT THOSE ITEMS
13 WERE CONSISTENT WITH ITEMS THAT MIGHT BE USED IN THE
14 MANUFACTURE OF METHAMPHETAMINE, ALTHOUGH THESE
15 PARTICULAR ITEMS IN THE HOUSE WERE NOT KEPT.

16 THE SUBSTANCE FOUND IN THE HOUSE WAS
17 APPARENTLY SOME SUBSTANCE IN A PICKLE JAR. I DON'T
18 KNOW WHAT THAT WAS. BUT MY GUESS IS THAT DETECTIVE
19 WINTERS WILL TESTIFY THAT HE BELIEVED THE SUBSTANCE
20 WAS USED IN THE MANUFACTURE OF METHAMPHETAMINE.
21 AND, AGAIN, WE THINK THERE ARE FOUNDATIONAL PROBLEMS
22 WITH NO TOX TEST, AND WE THINK IT'S NOT RELEVANT
23 UNDER 401 AND 402. IT'S NOT RELEVANT UNDER 404 AND
24 SUBJECT TO 403 BECAUSE IT'S MORE PREJUCIAL THAN
25 PROBATIVE.

1 THE COURT: SO WHAT YOU'RE TALKING ABOUT
2 IS THE WITNESS WILL TESTIFY THAT HE OBSERVED THE
3 CHEMICAL, FLEX TUBING, WHATEVER ELSE IN THE HOME,
4 THAT WAS NOT RETAINED. IT WILL NOT BE PRESENTED FOR
5 EVIDENCE, HE'LL SIMPLY TESTIFY THAT IT'S CONSISTENT
6 WITH A METHAMPHETAMINE LAB OR CHEMICAL LAB; IS THAT
7 WHAT YOU'RE SAYING?

8 MR. MAURO: I THINK IT IS.

9 MR. STOTT: I'M NOT INTRODUCING THAT. I
10 HAVE NO INTENT TO ASK ANY QUESTIONS ABOUT BEAKERS OR
11 FLASKS OR TRYING TO MAKE AMPHETAMINES.

12 WHAT I DO HAVE IS THAT HE FOUND A BEAKER OF
13 A SUBSTANCE WHICH HE WILL TESTIFY IS A PRECURSER TO
14 METHAMPHETAMINE. THE DEFENSE HAS ALREADY GONE INTO
15 THAT. WE HAD A HEARING WHERE THEY ASKED THEM ALL
16 THESE QUESTIONS, AND THEY TESTIFIED THAT THAT STUFF,
17 IN MY OPINION, IS A PRECURSER TO METHAMPHETAMINE.

18 AND THAT'S ALL I WANT, IS THAT THERE WAS A
19 JAR FULL OF THIS LIQUID, IT'S A PRECURSER FOR
20 METHAMPHETAMINES. IT GOES ALONG WITH THE STATE'S
21 THEORY THAT THIS IS WHAT THIS WHOLE MURDER IS ABOUT.
22 SO THAT IT'S A PRECURSER TO METHAMPHETAMINE, THAT'S
23 ALL I WANT TO GET IT IN FOR.

24 MR. MAURO: THERE'S A FOUNDATIONAL PROBLEM
25 TO THAT, BECAUSE WE DON'T HAVE ANY DOCUMENTMENTATION

1 TO PROVE THAT, AND FOR THE OFFICERS TO JUST SAY, WE
2 FOUND A PICKLE JAR IN THE HOUSE WITH A PRECURSER
3 CHEMICAL TO METHAMPHETAMINE, I DON'T THINK THERE'S AN
4 ADEQUATE FOUNDATION THAT THE COURT SHOULD ALLOW THAT
5 EVIDENCE IN.

6 THE COURT: ALL RIGHT. THE OBJECTION IS
7 OVERRULED. THAT'S NOT TO KEEP YOU FROM MAKING THE
8 APPROPRIATE OBJECTION WHEN THE EVIDENCE TO THAT IS
9 OFFERED. BUT IT SEEMS TO ME THAT A WITNESS WHO'S A
10 SEASONED INVESTIGATOR, WHO OBSERVES BOOKS OR
11 CHEMICALS THAT ARE CONSISTENT WITH A METHAMPHETAMINE
12 LAB AND HE'S HAD COMPARATIVE EXPERIENCE WITH THAT,
13 SHOULD BE ALLOWED TO TESTIFY ABOUT WHAT HE OBSERVED.

14 AND IF YOU WISH TO CROSS-EXAMINE AS TO
15 WEIGHT OR OTHER THINGS, YOU MAY CERTAINLY DO SO.

16 MR. MAURO: OKAY. THE NEXT ITEM, YOUR
17 HONOR, IS THAT I'M CONCERNED ABOUT THE PORTIONS OF
18 THE VIDEO, THE SHORT VIDEO, AND THE PICTURES THAT
19 SHOW-- THAT DEPICT THE DECEASED. THEY DON'T DEPICT
20 THE WOUND IN THE DECEASED; HOWEVER, THEY DO DEPICT
21 THE DECEASED. THERE ARE PICTURES OF BLOOD THAT
22 APPEARS ON HIS HAND AS HE'S LYING THERE AT THE SCENE
23 OF THE CRIME. AND I THINK ALL OF THOSE ITEMS, UNDER
24 THE CASE THAT WE CITED AND 403 AND OUR PRIOR MOTION
25 IN LIMINE RELATE TO MOST OF THOSE ITEMS. MOST OF

1 MR. STOTT: NO, YOUR HONOR. MAY SHE BE
2 EXCUSED?

3 THE COURT: ANY OBJECTION TO HER BEING
4 EXCUSED?

5 MR. MAURO: NO, YOUR HONOR.

6 THE COURT: THANK YOU. YOU MAY BE
7 EXCUSED. YOU MAY STEP DOWN. YOU MAY BE EXCUSED.
8 YOUR NEXT WITNESS, MR. STOTT.

9 MR. STOTT: MAY I LOOK OUTSIDE?

10 THE COURT: YES.

11

12 STEVE WINTERS.

13 CALLED AS A WITNESS, BEING FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE BE SEATED. STATE YOUR
16 FULL NAME, AND SPELL IT.

17 THE WITNESS: STEVE WINTERS, W-I-N-T-E-R-S,
18 S-T-E-V-E.

19 DIRECT EXAMINATION.

20 BY MR. STOTT:

21 Q. ARE YOU EMPLOYED, MR. WINTERS?

22 A. I AM.

23 Q. FOR WHOM?

24 A. SALT LAKE COUNTY SHERIFF'S OFFICE.

25 Q. WHAT DO YOU DO FOR THEM?

1 A. I'M A DETECTIVE.

2 Q. HAVE YOU HAD ANY SPECIAL EXPERIENCE WITH
3 NARCOTICS?

4 A. I DO.

5 Q. TELL US ABOUT THAT, AS FAR AS YOUR
6 EMPLOYMENT.

7 A. CURRENTLY I AM ASSIGNED TO THE NARCOTICS
8 UNIT.

9 Q. WHAT DO YOU DO?

10 A. INVESTIGATE NARCOTIC TRAFFICKERS.

11 Q. AND HOW LONG HAVE YOU BEEN DOING THAT?

12 A. THE LAST 18 MONTHS, APPROXIMATELY.

13 Q. DO YOU HAVE SPECIAL TRAINING IN THAT?

14 A. I DO.

15 Q. WHAT WAS THAT?

16 A. I DID A P.O.S.T. CERTIFICATION IN NARCOTICS
17 IDENTIFICATION, AS WELL AS SPECIAL TRAINING. I HAVE
18 HAD TRAINING WITH CALIFORNIA NARCOTICS OFFICERS
19 ASSOCIATION, AND THE CLANDESTINE LAB SCHOOL, AS WELL
20 AS SCHOOLS HERE AT P.O.S.T. THROUGH THE POLICE
21 DEPARTMENT.

22 Q. DOES THE EXPERIENCE OR TRAINING YOU HAD
23 WITH CLANDESTINE LABS, DOES THAT INCLUDE
24 METHAMPHETAMINE LABS?

25 A. YES.

1 Q. LET ME DIRECT YOUR ATTENTION TO -- I'M NOT
2 SURE WHAT TIME IT WAS, BUT THE 26TH OF MARCH. DID
3 YOU HAVE OCCASION TO BE CALLED TO 4646 WOODLAND
4 DRIVE, NUMBER FOUR?

5 A. YES.

6 Q. AND WHO CALLED YOU THERE?

7 A. SGT. RUSSO CALLED ME AND ASKED ME TO
8 RESPOND THERE.

9 Q. WERE YOU ASKED TO DO A SEARCH?

10 A. I WAS ASKED TO MEET WITH SGT. TOWNSEND
11 THERE AT THAT LOCATION.

12 Q. SUBSEQUENTLY, WERE YOU ASKED TO DO A
13 SEARCH?

14 A. YES, I WAS.

15 Q. DID YOU KNOW WHOSE RESIDENCE THAT WAS, OR
16 DID YOU FIND OUT?

17 A. YES, I DID. I FOUND OUT WHOSE IT WAS.

18 Q. AND WHOSE IS THAT?

19 A. MR. KIRILUK AND MS. PENROD'S.

20 Q. ARE YOU FAMILIAR WITH THE TERM PROEP?

21 A. YES.

22 Q. WHAT IS IT?

23 A. IT'S 2-PROPENOL, A PRECURSOR TO
24 METHAMPHETAMINE.

25 Q. WHAT DO YOU MEAN BY PRECURSER?

1 A. IT'S A MAJOR INGREDIENT FOR
2 METHAMPHETAMINES. IT'S JUST ONE OF THE INGREDIENTS.

3 Q. SOMETHING YOU HAVE TO HAVE TO MAKE
4 METHAMPHETAMINE?

5 A. YES.

6 Q. ARE YOU FAMILIAR WITH THE TERM COOK?

7 A. YES.

8 Q. WHAT DOES THAT MEAN.

9 A. TRADITIONALLY, THAT MEANS THAT THERE'S A
10 PERSON WHO IS A COOK, WHO ACTUALLY DOES THE PRODUCT,
11 MAKES THE PRODUCT.

12 Q. DID YOU LOOK FOR A PERSON NAMED HOGIE IN
13 THIS CASE?

14 A. YES, I DID.

15 Q. DID YOU FIND HIM?

16 A. NO, I DID NOT.

17 Q. DID YOU MAKE A SEARCH OF MR. KIRILUK'S
18 BEDROOM?

19 A. I DID.

20 Q. DID YOU FIND A PRECURSOR?

21 MR. MAURO: I OBJECT ON FOUNDATION
22 GROUNDS.

23 THE COURT: AS TO DATE AND TIME?

24 MR. MAURO: DATE, TIME, HIS BEDROOM?

25 THE COURT: OBJECTION SUSTAINED.

1 Q. (BY MR. STOTT) I'M TALKING ABOUT THIS
2 EVENING WHEN YOU WERE THERE?

3 A. YES, I DID.

4 Q. ABOUT WHAT TIME WAS IT?

5 A. APPROXIMATELY ABOUT TWO O'CLOCK IN THE
6 MORNING.

7 Q. DID YOU MAKE A SEARCH OF HIS BEDROOM?

8 A. YES.

9 MR. MAURO: OBJECTION, HEARSAY GROUNDS.
10 THEY HAVEN'T ESTABLISHED IT'S HIS BEDROOM.

11 THE COURT: OBJECTION SUSTAINED. I WILL
12 LET YOU ASK FURTHER QUESTIONS.

13 Q. (BY MR. STOTT) DID YOU MAKE A SEARCH OF THE
14 BEDROOM.

15 A. YES.

16 Q. TO DETERMINE WHOSE IT WAS?

17 A. YES.

18 Q. WHOSE WAS IT?

19 A. MR. KIRILUK'S.

20 Q. TELL US, DID YOU FIND--

21 MR. MAURO: AGAIN, I OBJECT. HE HASN'T
22 TOLD US -- HE TELLS US THAT'S HIS BEDROOM, BUT HE'S
23 TOLD US THAT MORE THAN ONE PERSON LIVES THERE.

24 THE COURT: OBJECTION OVERRULED.

25 Q. (BY MR. STOTT) DID YOU FIND A PRECURSOR?

A. YES.

Q. WHERE WAS IT?

A. IN THE CLOSET.

Q. WHAT DID IT CONSIST OF?

A. IT WAS INSIDE --

MR. MAURO: OBJECTION, FOUNDATION, TOO,
YOUR HONOR.

THE COURT: AS TO A CLOSET?

MR. MAURO: AS TO THE PRECURSER.

THE COURT: OBJECTION OVERRULED.

Q. (BY MR. STOTT) WAS IT IN SOMETHING?

A. BACKPACK.

Q. IT WAS IN A BACKPACK?

A. BOTTLES THAT WERE INSIDE OF THAT.

Q. AND WHAT ARE WE TALKING ABOUT? GIVE US A
DESCRIPTION OF THE BOTTLES.

A. ONE OF THEM WAS A PLASTIC GALLON JUG, AND
THERE WAS SEVERAL SMALL MASON JARS.

Q. DID YOU LOOK AT THOSE ITEMS?

A. I DID.

Q. WERE YOU FAMILIAR WITH ITEMS SUCH AS THOSE?

A. I AM.

Q. WHAT WAS IT?

A. I BELIEVED IT TO BE PRECURSORS TO
METHAMPHETAMINE.

1 Q. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY
2 MARKED AS STATE'S EXHIBITS NUMBER 5. DID YOU FIND
3 THAT AT THE HOUSE THAT NIGHT?

4 A. YES, I DID.

5 Q. WHERE?

6 A. IN THE BEDROOM.

7 Q. DID YOU SEIZE IT?

8 A. YES, I DID.

9 Q. DOES IT APPEAR TO BE IN THE SAME CONDITION
10 NOW AS WHEN YOU SEIZED IT?

11 A. YES.

12 MR. STOTT: THANK YOU. THAT'S ALL THE
13 QUESTIONS I HAVE.

14 THE COURT: CROSS EXAMINATION?

15 MR. MAURO: MS. MILLER IS GOING TO BE
16 DOING THAT. BUT BEFORE WE DO THAT, I GUESS YOU WERE
17 CORRECT THAT I DIDN'T OBJECT PREVIOUSLY WHEN
18 MS. MUMFORD WAS TESTIFYING. BUT I WOULD ASK YOU TO
19 GIVE THE JURY A CAUTIONARY INSTRUCTION REGARDING THE
20 STATEMENTS THAT CAME IN AND WERE MADE.

21 THE COURT: I WILL DO THAT IN THE JURY
22 INSTRUCTIONS.

23 MR. MAURO: THANK YOU.

24
25 CROSS-EXAMINATION

1 BY MS. MILLER:

2 Q. DETECTIVE WINTERS, DID YOU PREPARE A REPORT
3 IN CONNECTION WITH IN INCIDENT?

4 A. I DID.

5 MS. MILLER: MAY I APPROACH AT THIS TIME,
6 YOUR HONOR?

7 THE COURT: YOU MAY, CERTAINLY.

8 Q. (BY MS. WINTERS): I AM HANDING YOU WHAT I
9 HAVE BEEN GIVEN THROUGH DISCOVERY AS YOUR REPORT.
10 WILL YOU TAKE A LOOK AT THAT AND TELL ME IF THAT'S
11 YOUR COMPLETE AND ACCURATE REPORT FROM THIS
12 INCIDENT.

13 A. THAT'S MY KNOWLEDGE, YES.

14 Q. DID YOU FILL OUT ANY OTHER REPORTS IN
15 CONNECTION WITH THIS?

16 A. NOT TO MY RECOLLECTION.

17 Q. YOU DIDN'T FILL OUT ANY LIST OF EVIDENCE
18 THAT YOU SEIZED?

19 A. THAT'S IN THAT SECTION RIGHT THERE. BUT
20 THERE'S AN EVIDENCE CARD.

21 MS. MILLER: YOUR HONOR, WE HAVE NOT
22 RECEIVED A COPY OF THAT, TO MY KNOWLEDGE. MAY I
23 APPROACH THE WITNESS?

24 THE COURT: YOU MAY, YES.

25 MS. MILLER: TO LOOK AT THAT. YOUR HONOR,

1 MAY WE HAVE A MOMENT TO LOOK THIS OVER?

2 THE COURT: YOU MAY.

3 Q. (BY MS. MILLER) DETECTIVE WINTERS, YOU'VE
4 HAD A CHANCE TO TESTIFY IN CONNECTION WITH THIS CASE
5 BEFORE, HAVEN'T YOU.

6 A. YES.

7 Q. WE HAD A MOTION TO SUPPRESS HEARING; IS
8 THAT CORRECT?

9 A. THAT'S RIGHT.

10 Q. AND AT THAT HEARING YOU WERE QUESTIONED
11 ABOUT THE ITEMS THAT YOU STATED ON DIRECT TODAY THAT
12 YOU FOUND IN MR. PENROD'S AND MR. KIRILUK'S
13 APARTMENT; IS THAT CORRECT?

14 A. CORRECT.

15 Q. OKAY. DO YOU RECALL STATING AT THAT
16 HEARING THAT YOU DID NOT SEIZE ANY EVIDENCE FROM THE
17 APARTMENT?

18 A. PARDON ME?

19 Q. DO YOU RECALL AT THAT MOTION HEARING
20 STATING THAT YOU DID NOT SEIZE ANY EVIDENCE FOUND AT
21 THE APARTMENT?

22 A. NO.

23 Q. I WANT TO TALK TO YOU A LITTLE BIT ABOUT
24 YOUR EXPERIENCE. YOU SAID YOU HAD BEEN WORKING FOR
25 18 MONTHS IN THE POSITION YOU ARE CURRENTLY IN?

1 A. YES.

2 Q. THAT'S AS AS NARCOTICS OFFICER?

3 A. APPROXIMATELY THAT, YES.

4 Q. IS THAT THE RIGHT TERM? I MIGHT HAVE
5 MISIDENTIFIED THAT ON DIRECT EXAMINATION. IS THAT
6 CORRECT, NARTOTICS DETECTIVE?

7 A. THAT'S FINE, YES.

8 Q. SO AT THE TIME OF THIS INCIDENT, FAIR TO
9 SAY YOU WERE WORKING IN THAT CAPACITY FOR 12 MONTHS?

10 A. YES.

11 Q. ABOUT SIX MONTHS AGO. AND AS YOU STATED,
12 YOU HAVE HAD SOME SOME OTHER EXPERIENCE, SOME
13 CLASSES, AND SOME EDUCATION IN THIS REGARD; IS THAT
14 CORRECT?

15 A. YES.

16 Q. AND PART OF THAT EDUCATION HAS BEEN IN
17 REGARD TO CLANDESTINE LABS, OR WHAT WOULD MORE
18 COMMONLY BE KNOWN AS METH LABS?

19 A. YES.

20 Q. AND IN THAT EDUCATION, YOU HAVE PROBABLY
21 LEARNED THERE ARE TWO WAYS TO MAKE METH; IS THAT
22 TRUE?

23 A. YES. THERE'S ACTUALLY MORE THAN THAT, BUT
24 YES.

25 Q. SO THERE'S MORE THAN ONE WAY TO MAKE

1 METHAMPHETAMINE?

2 A. THAT'S RIGHT.

3 Q. AND EACH WAY REQUIRES A DIFFERENT VARIETY
4 OF INGREDIENTS; IS THAT FAIR TO SAY?

5 A. THAT'S RIGHT.

6 Q. AND THIS PRECURSER THAT WE HAVE BEEN
7 TALKING ABOUT HERE TODAY, YOU SAY, IS CALLED PROEP?

8 A. YES.

9 Q. OKAY. AND WHEN SOMEONE IS FOUND IN
10 POSSESSION OF PROEP, TO YOUR KNOWLEDGE, DOESN'T THAT
11 CONSTITUTE AS A FIRST DEGREE FELONY?

12 A. IN ITSELF, NO. IT'S JUST A SECOND DEGREE.

13 Q. OKAY. AND SO TO YOUR KNOWLEDGE, A FIRST
14 DEGREE FELONY IS WHEN SOMEONE IS CONDUCTING A METH
15 LAB; IS THAT CORRECT?

16 A. THAT'S RIGHT.

17 Q. SO IF SOMEONE WERE MAKING METH IN THEIR
18 APARTMENT, THEY WOULD BE CHARGED WITH A FIRST DEGREE
19 FELONY. IS THAT FAIR TO SAY?

20 A. WE TRY THAT.

21 Q. NOW, THE YOU STATED ON DIRECT THAT IN
22 CONNECTION WITH YOUR INVESTIGATION ON THIS CASE, YOU
23 LOOKED FOR A PERSON NAMED HOGIE; IS THAT CORRECT?

24 A. THAT'S CORRECT.

25 Q. AND THAT PERSON IS ALSO KNOWN TO YOU AS

1 BRANDON CURTIS; IS THAT CORRECT?

2 A. YES.

3 Q. OKAY. AND YOU HAVEN'T BEEN ABLE TO FIND
4 HIM, HAVE?

5 A. NO, MA'AM.

6 Q. AND IN YOUR INVESTIGATION I SUSPECT YOU
7 SPENT A CONSIDERABLE AMOUNT OF TIME LOOKING FOR THIS
8 PERSON; WOULD THAT BE FAIR TO SAY?

9 A. I SPENT SOME TIME, YES.

10 Q. OKAY. AND YOU'VE GONE OUT, PERHAPS, AND IN
11 YOUR INVESTIGATION, OUT TO THE AREA THAT'S BEEN
12 TALKED ABOUT WHERE THIS GREEN DINOSAUR IS. DID YOU
13 DO THAT IN INVESTIGATION?

14 A. HIS RESIDENCE IS THE GREEN DINOSAUR?

15 Q. THAT'S CORRECT.

16 A. YES.

17 Q. AND WERE UNABLE TO FIND HIM?

18 A. THAT'S RIGHT.

19 Q. OKAY. CAN'T TRACK HIM DOWN?

20 A. SPOKE WITH HIS MOTHER, AND WE HAVEN'T BEEN
21 ABLE TO LOCATE HIM.

22 Q. OKAY. IN RELATION TO THE SEARCH THAT YOU
23 CONDUCTED OF MS. PENROD'S AND MR. KIRILUK'S
24 APARTMENT, YOU SEARCHED THE ENTIRE APARTMENT; IS
25 THAT CORRECT?

1 A. THAT'S CORRECT.

2 Q. YOU FOUND DRUGS AND METHAMPHETAMINES IN
3 MS. PENROD'S ROOM? WE'LL DISCUSS --

4 A. THAT WAS FOUND BY DETECTIVE TOWNSEND.

5 Q. OKAY. SO TO YOUR KNOWLEDGE, DRUGS WERE
6 FOUND IN OTHER PORTIONS OF THE APARTMENT?

7 A. THAT'S RIGHT.

8 Q. AND WHEN YOU CONDUCTED THAT SEARCH, YOU
9 CALLED DETECTIVE WINTERS DOWN AT THE METROPOLITAN
10 HALL OF JUSTICE; RIGHT?

11 A. IT BE HARD FOR ME TO CALL MYSELF, BUT I
12 CALLED DETECTIVE CARR, YES.

13 Q. YOU PAGED HIM; RIGHT?

14 A. I CALLED HIM, YES. ON THE CELL PHONE.

15 Q. TALKED TO HIM ON THE PHONE; RIGHT?

16 A. YES.

17 Q. AND DURING THAT SEARCH YOU SAY YOU FOUND
18 PRECURSERS IN MR. KIRILUK CLOSET?

19 A. THAT'S RIGHT.

20 Q. OKAY. AND A PRECURSER IS WHAT YOU SAY IS
21 PROEP?

22 A. I BELIEVED IT TO BE PROEP, YES.

23 Q. AND YOU STATED THAT WAS IN A BACKPACK?

24 A. THAT'S RIGHT.

25 Q. AND ALONG WITH THAT, IN THE BACKPACK, WAS A

000000

1 GALLON JUG?

2 A. YES.

3 Q. AND SOME BOTTLES? DO YOU REMEMBER HOW MANY
4 BOTTLES?

5 A. NOT OFF THE TOP OF MY HEAD, NO.

6 MS. MILLER: I'M TAKING A MOMENT, YOUR
7 HONOR, BECAUSE I'M LOOKING AT THIS EVIDENCE LIST. I
8 WE'LL SHARE IT WITH DETECTIVE WINTERS?

9 THE COURT: THAT'S FINE.

10 MS. MILLER: I'D LIKE TO APPROACH THE
11 WITNESS, IF I COULD, YOUR HONOR.

12 THE COURT: CERTAINLY.

13 MS. MILLER: BECAUSE I DON'T HAVE A COPY OF
14 THAT, IS IT OKAY IF I ASK QUESTIONS FROM HERE?

15 THE COURT: IT CERTAINLY IS.

16 Q. (BY MS. MILLER) ON YOUR EVIDENCE LOG, THIS
17 IS FILLED OUT BY YOU?

18 A. YES.

19 Q. OKAY. AND YOU REFER TO AN OVERNIGHT BAG IN
20 A CLOSET?

21 A. UH-HUH. (AFFIRMATIVE.)

22 Q. DO YOU RECALL WHAT CLOSET THAT'S REFERRING
23 TO?

24 A. MR. KIRILUK'S.

25 Q. OKAY. AND IS THIS OVERNIGHT BAG THE

1 BACKPACK YOU DESCRIBED ON DIRECT TESTIMONY?

2 A. I DON'T BELIEVE SO.

3 Q. OKAY. WOULD YOU POINT TO ME ON THIS
4 EVIDENCE LOG WHERE THE BACKPACK IS THAT YOU'RE--

5 A. IT MAY BE -- THIS MAY HAVE BEEN INSIDE THE
6 PACKBACK. I'M NOT QUITE SURE. I WOULD HAVE TO HAVE
7 IT ALL IN FRONT OF ME TO SAY.

8 Q. THE BACKPACK ISN'T ON THERE, IS IT?

9 A. NO.

10 Q. DID YOU TAKE THE BACKPACK INTO EVIDENCE?

11 A. YES.

12 Q. YOU DIDN'T LIST IT ON YOUR EVIDENCE LOG?

13 A. NO.

14 Q. DO YOU KNOW THEN IF YOU STILL HAVE THAT IN
15 EVIDENCE?

16 A. I HAVEN'T TOUCHED THE EVIDENCE SINCE I SENT
17 IT TO THE LAB. SO I AM ASSUMING IT'S THERE.

18 Q. OKAY. YOU SENT ALL THIS EVIDENCE TO THE
19 LAB; IS THAT CORRECT?

20 A. WELL, NOT ALL OF IT. MAYBE THIS IS THE BAG
21 HERE, THE LEATHER BAG. (INDICATING.)

22 Q. WAS THAT BACKPACK MADE OUT OF LEATHER, OR
23 WAS IT MADE OUT OF CANVAS?

24 A. BOTH. I THINK IT WAS LEATHER SIDES AND
25 CANVAS FRONT, OR SOMETHING.

Q. OKAY. BUT YOU HAVEN'T WRITTEN "BACKPACK" ON HERE, SO YOU ARE NOT REALLY SURE WHICH WORDS ON HERE ARE REFERRING TO THAT BACKPACK.

MR. STOTT: I BELIEVE THIS IS IT HERE, MA'AM, THE LEATHER BAG.

Q. OKAY. THIS STATES THAT IN THAT BAG YOU FOUND A BOTTLE. DO YOU RECALL WHAT THAT BOTTLE WAS LIKE? DID YOU DESCRIBE THAT?

A. I THINK IT WAS A MASON JAR.

Q. MASON JAR?

A. I BELIEVE SO.

Q. DID IT HAVE ANYTHING IN IT?

A. I BELIEVE IT HAD PRECURSOR.

Q. AND THAT'S YOUR BELIEF?

A. YES.

Q. DID YOU SEND THAT TO THE CRIME LAB?

A. YES.

Q. DO YOU HAVE A TOXICOLOGY REPORT HERE ON THAT TODAY?

A. I DO NOT. I BELIEVE MR. STOTT HAS IT.

Q. IN YOUR SEARCH OF THIS APARTMENT, AS WE HAVE STATED EARLIER, THERE ARE -- THERE WERE DRUGS FOUND IN OTHER PORTIONS OF THE APARTMENT; IS THAT CORRECT?

A. PRECURSER, YES.

Q. AND METHAMPHETAMINE, AS WELL?

A. IN MS. PENROD'S PURSE, I BELIEVE IT WAS.

Q. SHE WAS -- TO YOUR KNOWLEDGE, WAS SHE
ARRESTED?

A. I'M NOT SURE.

Q. OKAY. AND DO YOU KNOW HOW MUCH
METHAMPHETAMINE-- DO YOU HAVE ANY KNOWLEDGE OF HOW
MUCH METHAMPHETAMINE WAS FOUND ON MS. PENROD?

A. I THINK IT WAS ABOUT FIVE GRAMS.

MS. MILLER: YOUR HONOR, MAY I HAVE A
MOMENT?

THE COURT: YOU MAY, YES.

Q. (BY MS. MILLER) WHEN YOU TESTIFIED TO WHAT
YOUR BELIEF OF WHAT THE SUBSTANCE WAS, ON MARCH 26,
1996, THAT'S SIMPLY BASED ON YOUR BELIEF AS YOU
STATED; IS THAT CORRECT?

A. YES.

Q. THAT'S FAIR TO SAY?

A. YES.

Q. THAT WAS YOUR BELIEF?

A. YES.

Q. YOU DIDN'T DO A FIELD TEST ON THE
SUBSTANCE, DID YOU?

A. THERE WAS A FIELD TEST DONE, YES.

Q. AND THAT'S NOT INCLUDED IN YOUR REPORT, IS

1 IT?

2 A. THE FIELD TEST WAS INCONCLUSIVE.

3 Q. INCONCLUSIVE?

4 A. YES.

5 Q. SO IT--

6 THE COURT: BE SURE YOU ANSWER AUDIBLY.
7 DON'T NOD YOUR HEAD. OKAY?

8 THE WITNESS: OKAY. IT DID NOT FLASH AS
9 METHAMPHETAMINE. WE DON'T HAVE A FIELD TEST FOR
10 PRECURSER.

11 Q. (BY MS. MILLER) OKAY. BUT METHAMPHETAMINE
12 INCLUDES A PRECURSOR; ISN'T THAT RIGHT?

13 A. THAT'S CORRECT.

14 Q. SO WHEN YOU DO A FIELD TEST, THAT MEANS AT
15 THE SCENE YOU ARE TESTING TO SEE IF THIS IS AN
16 ILLLEGAL SUBSTANCE; IS THAT CORRECT?

17 A. THAT'S RIGHT.

18 Q. OKAY. AND WHEN YOU TESTED THIS SUBSTANCE
19 AT THE SCENE, IT DIDN'T TEST AS AN ILLEGAL
20 SUBSTANCE; IS THAT CORRECT?

21 A. IT DID FLASH, BUT IT TOOK SOME TIME. AND
22 IT'S BEEN MY EXPERIENCE THAT METH WILL FLASH
23 IMMEDIATELY.

24 Q. SO WHEN YOU SAY IT WAS INCONCLUSIVE, IT
25 DIDN'T CONCLUSIVELY SAY THAT THIS WAS AN ILLEGAL

1 SUBSTANCE.

2 A. IF YOU LOOK AT THE FIELD TEST OF THE
3 SUBSTANCE, THAT WAS METHAMPHETAMINE.

4 Q. BUT WE'RE ABOUT CONCLUSIVE AND
5 INCONCLUSIVE?

6 A. THAT'S RIGHT.

7 Q. THOSE ARE WORDS YOU USED; IS THAT FAIR?

8 A. YES. IT'S BEEN MY EXPERIENCE IN TRAINING
9 IF IT FLASHES IMMEDIATELY--

10 MS. MILLER: YOUR HONOR, MAY I INSTRUCT THE
11 WITNESS--

12 THE COURT: GO AHEAD AND ASK YOUR
13 QUESTION. JUST WAIT UNTIL SHE ASKS HER QUESTION.

14 Q. (BY MS. MILLER) YOU STATED THAT THIS TEST
15 WAS INCONCLUSIVE FOR METHAMPHETAMINES.

16 A. YES.

17 Q. IS THAT CORRECT?

18 A. THAT'S RIGHT.

19 Q. SO THIS SUBSTANCE THAT YOU FOUND TESTED
20 INCONCLUSIVE FOR A CONTROLLED SUBSTANCE. IS THAT
21 FAIR TO SAY?

22 A. THAT'S RIGHT.

23 Q. AND A CONTROLLED SUBSTANCE IS OTHERWISE
24 KNOWN IN THE LAW AS AN ILLLEGAL SUBSTANCE; IS THAT
25 CORRECT? FAIR TO SAY?

1 A. YES.

2 Q. SO THIS FIELD TEST THAT YOU CONDUCTED ON
3 THIS SUBSTANCE TESTED INCONCLUSIVE FOR AN ILLEGAL
4 SUBSTANCE. IS THAT FAIR TO SAY?

5 A. FOR METHAMPHETAMINES, YES.

6 Q. AND METHAMPHETAMINE IS AN ILLEGAL
7 SUBSTANCE?

8 A. YES.

9 MS. MILLER: YOUR HONOR, I HAVE NO FURTHER
10 QUESTIONS.

11 THE COURT: ANY FURTHER QUESTIONS OF THIS
12 WITNESS?

13 MR. STOTT: MAY I, YOUR HONOR?

14 THE COURT: YES.

15
16 REDIRECT EXAMINATION.

17 BY MR. STOTT:

18 Q. SO IT WASN'T METHAMPHETAMINES?

19 A. NO, SIR.

20 Q. BUT IT WAS A PRECURSOR TO METHAMPHETAMINES?

21 A. YES.

22 Q. AND THAT'S BASED UPON YOUR EXPERIENCE AND
23 KNOWLEDGE?

24 A. YES.

25 Q. AND UNDERSTANDING?

1 A. YES.

2 MR. STOTT: THANK YOU.

3 THE COURT: ANYTHING FUTURER?

4 MR. MAURO: NO. YOUR HONOR.

5 MS. MILLER: NO, YOUR HONOR.

6 THE COURT: THANK YOU. MR. WINTERS, YOU
7 MAY STEP DOWN. SINCE IT'S CONVENIENT TO NOON, WE'LL
8 TAKE OUR NOON RECESS. WE'LL ASK THAT YOU RECONVENE
9 SO THAT WE CAN BE IN SESSION AT 1:30. AGAIN, DO NOT
10 DISCUSS THE CASE WITH ANYONE. REMEMBER MY PRIOR
11 ADMONITIONS OF YESTERDAY. BE CAUTIOUS IN ENTERING
12 AND EXITING THE COURTHOUSE IN THE SENSE THAT YOU
13 DON'T MINGLE IN THE HALLS.

14 COME STRAIGHT TO THE CONVENING AREA WHICH
15 THE BAILIFF HAS SHOWN YOU.

16 MR. MAURO: MAY WE APPROACH?

17 THE COURT: YOU MAY IN JUST A MOMENT.
18 BEFORE WE GO INTO RECESS, THEN, YOU MAY APPROACH.

19 (BENCH CONFERENCE, OFF THE RECORD.)

20 THE COURT: ALL RIGHT. WE'LL LEAVE THE
21 SAME RECESS PLAN AS I PREVIOUSLY INDICATED. THERE
22 IS A MATTER OF LAW THAT WE'RE GOING TO DEAL WITH OUT
23 OF THE PRESENCE OF THE JURY AT ABOUT 1:30. WE
24 ANTICIPATE BEING CONCLUDED BY 1:45. I THINK THAT
25 WILL BE A MORE COMFORTABLE TIME. SO WE'LL BE IN

ADDENDA G

1 CAR HAD BEEN AT THE SCENE?

2 A. NO.

3 Q. DID YOU ARREST DAMON?

4 A. YES. THE SAME NIGHT.

5 Q. DO YOU KNOW WHEN THAT WAS?

6 A. APRIL 4TH, I BELIEVE. THE SAME NIGHT AS
7 REBECCA.

8 Q. AT THAT TIME WERE THERE POSSESSIONS OF
9 DAMON'S SEIZED?

10 A. YES.

11 Q. CAN YOU TELL US ABOUT THAT?

12 A. WELL, WHEN WE ARRESTED HIM HE WAS STAYING
13 IN AN APARTMENT OUT IN WEST VALLEY. HE HAD SEVERAL
14 BAGS, LIKE A DUFFLE BAG, AND A COUPLE OF OTHER BAGS.
15 THESE WERE INSIDE THE APARTMENT. AFTER HIM AND
16 REBECCA WERE ARRESTED, THE APARTMENT OWNER DIDN'T
17 WANT THE BAGS LEFT THERE, SO HE REQUESTED THAT WE
18 TAKE THEM. AND I BOOKED THEM INTO OUR EVIDENCE.

19 Q. AND WERE THEY TAKEN TO THE LAB?

20 A. YES.

21 Q. TO BE ANALYZED?

22 A. THEY WERE EXAMINED.

23 Q. DO YOU KNOW IF A PARTICULAR SHIRT --
24 SOMETHING TO DO WITH HEAVY METAL --

25 A. THERE WAS ONE SHIRT THAT WAS MENTIONED, I

1 BELIEVE, AS THE SUSPECT WEARING THAT NIGHT. AND
2 THAT WAS A BLACK SHIRT THAT HAD "HEAVY METAL SHOP"
3 ON IT.

4 Q. WAS THAT ONE OF THE ONES THAT WAS TAKEN
5 OUT?

6 A. YES.

7 Q. WHAT WAS THE RESULTS OF THAT EXAMINATION?

8 A. AFTER THE EXAMINATION, NO BLOOD WAS LOCATED
9 ON THAT CLOTHING.

10 MR. MAURO: OBJECT. WE HAVEN'T -- WE
11 HAVEN'T BEEN PROVIDED THAT INFORMATION AS PART OF
12 OUR DISCOVERY, I WOULD LIKE TO SEE THAT. I HADN'T
13 BEEN AWARE OF THAT PRIOR TO NOW, AND UNDER WHAT
14 CIRCUMSTANCES AN ANALYSIS HAD BEEN CONDUCTED ON
15 THE--

16 MR. STOTT: NOTHING WAS FOUND. THERE'S NO
17 ANALYSIS TO SHOW HIM.

18 THE COURT: I JUST HEARD THE TESTIMONY
19 THAT NOTHING WAS FOUND. I DON'T KNOW THE BASIS OF
20 YOUR OBJECTION IS.

21 MR. MAURO: THE BASIS OF THE OBJECTION --

22 THE COURT: IS IT RELEVANCE?

23 MR. MAURO: NO, NO. NO, WE'VE GOT THIS
24 STUFF, AND I JUST WANT TO SEE THE MATERIAL WHERE THE
25 ANALYSIS HAS BEEN DONE. WE WEREN'T AWARE OF THAT.

1 THE COURT: OBJECTION OVERRULED.

2 Q. (BY MR. STOTT) LET ME ASK YOU THIS: ON
3 THE 25TH OF MARCH DID YOU HAVE OCCASION TO GO TO
4 WOODLAND AVENUE?

5 A. YES.

6 Q. AN APARTMENT THERE?

7 A. YES.

8 Q. WHAT WAS YOUR PURPOSE FOR GOING THERE?

9 A. TO CONTACT MR. KIRILUK.

10 Q. WHY WERE ARE YOU CONTACTING HIM?

11 A. THROUGH THE COURSE OF OUR INVESTIGATION,
12 HIS NAME WAS THE ONE THAT WE ASSOCIATED WITH THE --
13 MR. BROWN WAS PICKED UP THAT NIGHT BY MR. KIRILUK.
14 FROM MR. BROWN'S HOUSE.

15 Q. AT THAT TIME WERE YOU GOING THERE TO ARREST
16 HIM?

17 A. NO.

18 Q. DO YOU REMEMBER WHAT TIME YOU GOT THERE?

19 A. IT WAS A LITTLE BEFORE MIDNIGHT.

20 Q. WAS MR. KIRILUK THERE?

21 A. YES.

22 Q. WHAT DID YOU ASK HIM?

23 A. I ASKED IF HE WOULD GO WITH ME DOWN TO THE
24 HALL OF JUSTICE. I WANTED TO ASK HIM A FEW
25 QUESTIONS.

1 INTERVIEW?

2 A. THREE.

3 Q. HOW LONG WERE THESE INTERVIEWS?

4 A. THEY APPROXIMATELY STARTED AT 12:45 A.M.
5 AND ENDED AT 4:10 OR 4:15. SO ABOUT THREE AND A HALF
6 HOURS.

7 Q. THANK YOU.

8 THE COURT: DOES THAT CONCLUDE YOUR DIRECT
9 EXAMINATION?

10 MR. STOTT: YES, YOUR HONOR.

11 THE COURT: PRIOR TO YOUR CROSS, LET'S
12 TAKE A RECESS.

13 (WHEREUPON, COURT IN BRIEF RECESS AT 2:40
14 P.M.)

15 (COURT RESUMES SESSION OUTSIDE THE PRESENCE
16 OF THE JURY.)

17 THE COURT: THE RECORD MAY SHOW WE'RE
18 CONVENED OUTSIDE THE PRESENCE OF THE JURY. THE
19 BAILIFF TOLD ME THAT SOMEONE HAS REQUESTED THAT
20 THERE BE A HEARING OUTSIDE THE PRESENCE.

21 MR. MAURO: YES, YOUR HONOR. I THINK AT
22 THIS POINT WE'D MOVE FOR A MISTRIAL ON THE BASIS
23 THAT BEFORE TODAY WE WERE NOT INFORMED, PRIOR TO
24 TODAY, THAT THERE'D BEEN TESTING DONE ON
25 MR. MUMFORD'S CLOTHING.

C E R T I F I C A T E

STATE OF UTAH

COUNTY OF SALT LAKE

I, GAYLE CAMPBELL, CERTIFIED SHORTHAND
REPORTER AND NOTARY PUBLIC FOR THE STATE OF UTAH,
CERTIFY:

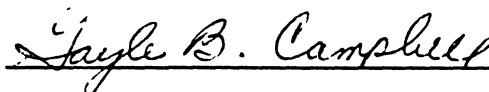
THAT I AM AN OFFICIAL COURT REPORTER IN THE
THIRD JUDICIAL COURT OF THE STATE OF UTAH;

THAT I WAS PRESENT DURING THE ENTIRE
PROCEEDINGS IN THE BEFORE-ENTITLED CAUSE;

THAT THE PROCEEDINGS WERE REPORTED STENO-
GRAPHICALLY BY ME, AND WERE THEREAFTER TRANSCRIBED;

THAT SAID TRANSCRIPT CONSTITUTES TO THE
BEST OF MY ABILITY A TRUE AND COMPLETE RECORD OF THE
PROCEEDINGS HAD.

IN WITNESS THEREOF, I HAVE SUBSCRIBED MY
NAME AND AFFIXED MY SEAL THIS 11TH DAY OF MARCH,
1997.



GAYLE CAMPBELL, CSR, RPR

1 AS THE COURT IS LIKELY AWARE, WE FILED
2 DISCOVERY REQUESTS, REQUESTING THAT MATERIAL. OUR
3 GENERAL DISCOVERY REQUEST WHICH WAS FILED AT THE
4 BEGINNING OF THE CASE, PLUS WE HAVE FILED A SECOND
5 SUPPLEMENTAL DISCOVERY REQUEST SEEKING CRIME LAB
6 MATERIALS. THAT WAS FILED BACK ON THE 21ST OF MAY
7 OF THIS YEAR, SIGNED BY MS. MILLER AND MYSELF.

8 IN ADDITION, AT THE PRELIMINARY HEARING WE
9 ASKED SPECIFICALLY WHETHER MR. MUMFORD'S CLOTHING
10 HAD BEEN TAKEN INTO CUSTODY, TESTED FOR BLOOD, AND
11 THE ANSWER WAS THAT THE CLOTHING HAS BEEN IN
12 CUSTODY, BUT NO TEST HAD YET BEEN PERFORMED.

13 IT'S MY UNDERSTANDING THAT TESTS HAVE BEEN
14 PERFORMED. WE HAVE ASKED FOR THOSE, AND CERTAINLY
15 IT'S CENTRAL TO YOUR DEFENSE TO FIGURE OUT WHETHER
16 THE TESTS ARE ACCURATE, WHAT CLOTHES WERE TESTED,
17 HOW THEY DID THE TESTING, AND THE RESULTS.

18 NONE OF THIS HAS BEEN PROVIDED TO US PRIOR
19 TO TODAY. AND THAT IS THE BASIS. WE BELIEVE THERE
20 IS A DISCOVERY VIOLATION. RULE 16 HAS BEEN
21 VIOLATED, AND ON THAT BASIS WE MOVE FOR A MISTRIAL.

22 THE COURT: MR. STOTT.

23 MR. STOTT: WELL, THE TESTING WAS RECENTLY
24 DONE. I'M SURE ON CROSS-EXAMINATION -- THE POINT
25 IS, NOTHING WAS FOUND. THERE WAS NOTHING TO GET. I

1 HAVE NO REPORTS. I'VE NOT BEEN GIVEN ANY REPORTS.
2 I HAVE NO REPORTS OF THAT. I THINK ON
3 CROSS-EXAMINATION THEY CAN DETERMINE EXACTLY WHAT
4 HAPPENED, BUT THERE'S BEEN NO VIOLATION BECAUSE I
5 HAVE NO REPORTS TO GIVE HIM.

6 THE COURT: YOU DESIRE TO BE HEARD ANY
7 FURTHER?

8 MR. MAURO: I DO. THERE HAS TO BE
9 SEROLOGY REPORTS SOMEWHERE, TO COME ON THE WITNESS
10 STAND AND SAY THE THINGS WERE TESTED. I'M NOT A
11 SEROLOGIST OR LAB TECHNICIAN, AND WE NEED TO KNOW
12 THAT THEY WERE ALL NEGATIVE, HOW THEY WERE TESTED,
13 AND THE METHODOLOGY THAT WAS USED TO CONDUCT THE
14 TESTING. I DON'T KNOW ANYTHING ABOUT THAT.

15 THE COURT: HOW HAVE YOU BEEN PREJUDICED
16 BY THAT? IF THE REPORTS HAD COME BACK POSITIVE, IT
17 WOULD BE EVEN MORE INCULPATORY, TO MR. MUMFORD, AT
18 LEAST, AND CERTAINLY POTENTIALLY EXPLAIN THE STORY
19 THAT WE HAVE HEARD FROM MULTIPLE WITNESSES, THAT
20 BOTH PARTIES WERE PRESENT AT OR ABOUT THE SCENE OF
21 THE CRIME.

22 BUT HOW CAN YOU BE PREJUDICED BY THE FACT
23 THAT DURING THE COURSE OF AN EXAMINATION BY AN
24 OFFICER, THERE IS A STATEMENT ASKED HIM AS TO
25 WHETHER THE CO-DEFENDANT'S CLOTHING HAD BEEN

1 EXAMINED, AND HE SAYS, "YES, AND IT CAME BACK
2 NEGATIVE."

3 MR. MAURO: BECAUSE THE CO-DEFENDANT
4 COMMITTED THE CRIME. IT GOES SIMPLY TO OUR THEORY
5 OF THE CASE. I DON'T KNOW WHAT METHODS THEY USED, I
6 DON'T KNOW THE QUALIFICATIONS OF THE PERSON TESTING
7 IT, I DON'T KNOW THE LAB THAT THEY USED.

8 I DON'T KNOW ANYTHING ABOUT ANY OF THAT
9 EVIDENCE, OTHER THAN WHAT WE LEARNED AT THE
10 PRELIMINARY HEARING, AND OTHER WHAT WAS REQUESTED IN
11 OUR SUPPLEMENTAL REQUEST FOR DISCOVERY.

12 THE COURT: OKAY. WELL, YOU HAVE HAD THE
13 OPPORTUNITY TO MAKE YOUR RECORD. YOUR MOTION FOR A
14 MISTRIAL IS DENIED. I DON'T SEE ANY PREJUDICE TO
15 YOUR CASE FROM THE STANDPOINT OF THE INFORMATION
16 THAT I HAVE AVAILABLE TO ME NOW.

17 AND I'LL ALSO NOTE FOR THE RECORD THAT MR.
18 STOTT, ON BEHALF OF THE STATE, SAYS THAT THIS IS THE
19 FIRST HE'S EVER HEARD OF TESTING BEING DONE. AND I
20 PRESUME THAT THIS TESTING HAD TO BE DONE AFTER THE
21 PRELIMINARY HEARING WHEN THE QUESTION WAS ASKED.
22 AND I DON'T KNOW TO WHOM THAT QUESTION WAS ADDRESSED
23 IN PRELIMINARY HEARING.

24 MR. MAURO: FOR THE RECORD, I ADDRESSED
25 THAT, I BELIEVE, TO DETECTIVE CARR.

1 THE COURT: OKAY.

2 MR. MAURO: AND THE SECOND THING IS,
3 CERTAINLY RULE 16 AND STATE VERSUS KNIGHT REQUIRES
4 CONTINUING TO PROVIDE TO US CONTINUAL DISCOVERY AS
5 THAT BECOMES AVAILABLE TO THE STATE, AND NOTES THAT
6 WHEN THESE KINDS OF THINGS ARE HAPPENING, THAT
7 SHOULD BE SUBJECT TO EXPERT TESTIMONY TO INTERPRET
8 THOSE RESULTS.

9 WE HAVEN'T BEEN GIVEN ANY NOTICE UNDER
10 77-17-13 NOR ANY INFORMATION FROM THE CRIME LAB
11 RELATED TO THE RESULTS OF THE TESTS OR HOW THEY WERE
12 CONDUCTED.

13 THE COURT: I GUESS THE PROBLEM FROM MY
14 PERSPECTIVE IS THAT I'M HAVING A HARD TIME
15 UNDERSTANDING HOW YOU ARE PREJUDICED WHEN IT'S ALL
16 NEGATIVE? BUT YOU HAVE A DIFFERENT PERSPECTIVE THAN
17 I DO.

18 MR. MAURO: I DON'T KNOW THE METHODOLOGY
19 OF THE RESULTS.

20 THE COURT: SO WHAT IF THE METHODOLOGY OF
21 THE RESULTS IS FLAWED? THEN THE RESULTS ARE
22 INVALID. AND IT COMES BACK, FOLKS SAY, LET'S TEST
23 IT WITH THE PROPER METHODOLOGY, IT COMES BACK STILL
24 NEGATIVE, AND DOESN'T MAKE ANY DIFFERENCE. IF IT
25 COMES BACK POSITIVE, THEN WHAT'S THE IMPACT UPON

1 YOUR CLIENT'S SITUATION?

2 MR. MAURO: IT WOULD SHOW THE CO-DEFENDANT
3 HAS THE VICTIM'S BLOOD ON THE--

4 THE COURT: THE CO-DEFENDANT HAS THE
5 VICTIM'S BLOOD ON THE CO-DEFENDANT; RIGHT.

6 MR. MAURO: RIGHT.

7 THE COURT: AND SO WHAT YOU'RE SUGGESTING
8 IS THAT, HOPEFULLY, THOSE TESTS COULD HAVE COME BACK
9 POSITIVE, TO SHOW THAT THE VICTIM'S BLOOD ON THE
10 CO-DEFENDANT. HOW DO YOU THEN SEPARATE THE TWO OF
11 THEM, BEING THE ONLY TWO IN THE PRESENCE OF THE
12 DECEASED DURING THE MOMENT OF HIS PASSING?

13 MR. MAURO: MR. KIRILUK MAY NOT HAVE BEEN
14 IN HIS PRESENCE.

15 THE COURT: WE HAVE HEARD TESTIMONY TO
16 INDICATE THAT MR. KIRILUK AND MR. MUMFORD WERE THE
17 ONLY TWO PRESENT THAT LEAVE THE SCENE AND CAME BACK
18 TO THE SCENE WITH APPROXIMATELY COMPARABLE TIMING.
19 SO THE TESTIMONY SHOWS THUS FAR -- OKAY. I'VE
20 INDICATED THE MISTRIAL IS DENIED. WE'LL CALL THE
21 JURY.

22 MR. STOTT: I HAD JUST A COUPLE MORE
23 QUESTIONS, IF I COULD ASK HIM WHEN THE JURY IS HERE.

24 (WITNESS RESUMES STAND. PROCEEDINGS
25 CONTINUE IN PRESENCE OF JURY.)

1 WERE SHOWING HER WAS ACCURATE; IS THAT CORRECT?

2 A. I BELIEVE SO, YES.

3 Q. SO WHEN SHE WAS SAYING, "I DON'T REMEMBER,"
4 SAYING THAT -- YOU DO REMEMBER HER SAYING THAT?

5 A. SURE.

6 Q. AND THERE WERE ISSUES -- WE WERE TALKING
7 ABOUT WHO HAD THE KNIFE. DID DAMON HAVE THE KNIFE?

8 A. IF YOU ARE REFERRING TO THE ONE THAT WAS
9 TAPE-RECORDED, YES.

10 Q. AND YOU TOLD US AGAIN AT THE PRELIMINARY
11 HEARING THAT THAT HAD BEEN TAPE RECORDED A COUPLE OF
12 TIMES? YOU MEAN, YOU HAD LISTENED IT TO IT A COUPLE
13 OF TIMES?

14 A. RIGHT.

15 Q. AND STATEMENTS THAT SHE MADE, EVEN THOUGH
16 SHE COULDN'T REMEMBER THOSE, YOU REMEMBER THEM AS
17 BEING ACCURATE?

18 A. UH-HUH. (INDICATING AFFIRMATIVE.)

19 Q. YOU HAVE INDICATED THAT YOU HAD
20 MR. KIRILUK'S CLOTHING, AND IT WAS A FAIR AMOUNT OF
21 CLOTHING, A JACKET, A SHIRT, AND SHOES?

22 A. SHOES, YES.

23 Q. ALL OF THOSE WERE TESTED AT THE LAB?

24 A. RIGHT.

25 Q. NONE OF THOSE HAD BLOOD ON THEM?

1 A. NO.

2 Q. YOU WENT TO MR. KIRILUK'S APARTMENT?

3 A. ON THE 26TH?

4 Q. YES?

5 A. YES.

6 Q. YOU DIDN'T FIND ANY EVIDENCE THAT HE'D BEEN
7 OUT AT THE SCENE, OTHER THAN THE BRANCH THAT YOU
8 HAVE TESTIFIED TO?

9 A. CORRECT.

10 Q. YOU DIDN'T SEE WHO BROUGHT THE BRANCH
11 THERE?

12 A. NO ME PERSONALLY, NO.

13 Q. RIGHT. OR WHEN IT HAS BEEN BROUGHT THERE?

14 A. NO.

15 Q. WHETHER ANY OF THE MUMFORDS HAD BROUGHT IT
16 THERE?

17 A. NO.

18 Q. WHETHER ANY OF THE MUMFORDS HAD LEFT IT
19 THERE?

20 A. AGAIN, IF YOU ARE ASKING ME IF I HAD SEEN
21 IT --

22 Q. RIGHT. NO. JUST -- YOU HAD PERSONAL
23 KNOWLEDGE OF THAT FROM WHAT YOU OBSERVED. YOU
24 DIDN'T SEE WHO BROUGHT THE BRANCH THERE, DID YOU?

25 A. NO. NO.

ADDENDA H

1 Q. YOU LOOKED INSIDE--

2 A. I WAS SHOWN THE DRIVERS LICENSE.

3 Q. AND IT WAS THUMPER'S?

4 A. YES.

5 Q. AND YOU MAY OR OR MAY NOT HAVE SAID
6 SOMETHING TO CHABLIS. OR YOU SAY YOU DIDN'T SAY
7 ANYTHING TO CHABLIS ABOUT NOT SAYING THAT?

8 A. NO.

9 Q. YOU TAKE THE ITEMS AWAY, AND YOU BURN THEM?

10 A. AFTER THEY HAD BEEN PARTIALLY BURNED, YES.

11 Q. AND YOU'VE PREVIOUSLY TOLD US THAT YOU KNEW
12 HOW THE STABBING OCCURRED. YOU TOLD US THAT YOU
13 KNEW THAT DAMON WAS ASKED -- THAT THUMPER WAS ASKED
14 TO GET ON HIS KNEES; RIGHT?

15 A. YES.

16 Q. AND THAT HE WAS HIT IN THE HEAD?

17 A. YES.

18 Q. AND YOU KNEW THAT HIS THROAT WAS SLAHED?

19 A. THAT'S WHAT I HAD BEEN TOLD.

20 Q. AND YOU TOLD US AT THE PRELIMINARY HEARING
21 THAT DAMON TOLD HIM TO GET ON HIS KNEES AND PRAY?

22 A. SOMETHING LIKE THAT.

23 Q. AND SO DAMON IS YOUR HUSBAND?

24 A. YES.

25 Q. AND HE'S THE ONE THAT TOLD HIM THAT?

1 A. YES.

2 Q. WHAT YOU'RE TELLING THE JURY IS THAT EVERY
3 PIECE OF EVIDENCE THAT YOU HAD TAKEN FROM THE CRIME
4 SCENE WAS DESTROYED, EXCEPT FOR THE KNIFE; RIGHT?

5 A. I DON'T UNDERSTAND WHAT YOU ARE ASKING.

6 Q. EVERY OTHER PIECE OF THUMPER'S PROPERTY WAS
7 BURNED.

8 A. TO MY KNOWLEDGE.

9 Q. AND YOUR HUSBAND'S "HEAVY METAL" SHIRT IS
10 NOT PART OF THE EVIDENCE?

11 A. I DON'T KNOW WHETHER IT IS, OR NOT.

12 Q. THAT'S FAIR. BUT THIS KNIFE WASN'T
13 DESTROYED OR MOVED?

14 A. NO.

15 Q. THE POLICE ASKED YOU TO TAKE A POLYGRAPH OR
16 LIE DETECTOR TEST?

17 A. NO.

18 MR. MAURO: LET ME JUST HAVE A MOMENT,
19 YOUR HONOR.

20 (CONFERS WITH CO-COUNSEL OFF THE RECORD.)

21 Q. (BY MR. MAURO) YOU DIDN'T TESTIFY THAT
22 HE-- YOU DIDN'T TESTIMONY AT THE PRELIMINARY HEARING
23 THAT JOHN HAD A GUN, DID YOU?

24 A. I DON'T THINK SO. I DON'T THINK I WAS EVER
25 ASKED.

1 Q. OKAY. DID YOU -- YOU TESTIFIED TODAY THAT
2 JOHN SAID THAT THE ITEMS NEEDED TO BE BURNED? IS
3 THAT YOUR TESTIMONY ON DIRECT WHEN MR. STOTT WAS
4 ASKING YOU THOSE QUESTIONS?

5 A. THEY NEEDED TO BE DESTROYED.

6 Q. OKAY. DO YOU REMEMBER TESTIFYING AT THE
7 PRELIMINARY HEARING THAT YOU SAID THAT THE ITEMS
8 NEEDED TO BE BURNED?

9 A. YES.

10 Q. OH, YEAH. MS. MILLER HAS REMINDED ME. YOU
11 GET OUT ON A POSSESSION WITH INTENT CHARGE BECAUSE
12 YOU POSTED BAIL. THEN YOU SET UP A MEETING AT
13 MR. UDAY'S OFFICE, AND YOU SKIPPED THAT MEETING?

14 A. YES.

15 Q. AND THEN THERE WAS A WARRANT ISSUED FOR
16 YOUR ARREST AFTER THAT?

17 A. YES.

18 Q. AND YOU KNEW JOHN WAS IN JAIL AT THAT TIME?

19 A. YES.

20 Q. YOU KNEW HE HAD BEEN CHARGED WITH MURDER?

21 A. I DIDN'T KNOW EXACTLY WHAT HE'D BEEN
22 CHARGED WITH. I KNEW IT WAS SOMETHING SERIOUS.

23 Q. YOU KNEW HE WAS A SUSPECT?

24 A. IN THE MURDER?

25 Q. YES.

1 A. YES.

2 Q. YOU KNEW THAT YOU MIGHT BE A SUSPECT?

3 A. YES.

4 Q. AND YOU KNEW THAT YOUR HUSBAND MIGHT BE A
5 SUSPECT?

6 A. YES.

7 Q. BUT YOU DIDN'T TURN YOURSELF IN TO THE
8 POLICE?

9 A. NO.

10 Q. OR CONTACT THE POLICE?

11 A. NO.

12 Q. IN FACT, YOU WERE ARRESTED AT WHAT, THE
13 SHADOWBROOK APARTMENTS?

14 A. YES.

15 Q. WITH YOUR HUSBAND?

16 A. YES.

17 MR. MAURO: NOTHING FURTHER, YOUR HONOR.

18 THE COURT: REDIRECT?

19 MR. STOTT: THANK YOU, YOUR HONOR.

20

21 REDIRECT EXAMINATION.

22 BY MR. STOTT:

23 Q. WHAT ELSE DID DAMON TELL YOU ABOUT WHAT
24 HAPPENED THAT NIGHT WHEN THE THREE OF THEM WENT DOWN
25 THERE?

1 A. HE TOLD ME THAT HE ASKED MIKE IF HE
2 BELIEVED IN GOD, AND MIKE SAID YES. AND HE TOLD HIM
3 TO GET ON HIS KNEES AND PRAY, THEN HE HIT HIM.

4 Q. WHO HIT HIM?

5 A. JOHN SLAHED HIS THROAT AND THEN STABBED HIM
6 IN ONE SIDE AND IT CAME OUT THE OTHER.

7 Q. JOHN SLASHED HIS THROAT?

8 A. THAT'S WHAT DAMON TOLD ME.

9 Q. WHAT DID DAMON SAY HE DID?

10 A. HE SAID THAT HE HIT HIM -- THAT "I HIT
11 THUMPER."

12 Q. THE FIREARM CHARGE, AS YOU CAN SEE, IT'S
13 BEEN CLOSED OUT. AND THAT'S AN A, RATHER THAN A
14 THIRD DEGREE. IS THAT YOUR UNDERSTANDING?

15 A. YES.

16 Q. THE RESOLUTION OF THAT MATTER, DID IT HAVE
17 ANYTHING TO DO WITH WHAT WE'RE DOING TODAY?

18 A. NO, SIR.

19 Q. YOU TESTIFIED TODAY, OBVIOUSLY, FOR THE
20 STATE AGAINST MR. KIRILUK; IS THAT TRUE?

21 A. YES.

22 Q. DO YOU INTEND TO TESTIFY FOR THE STATE
23 AGAINST DAMON MUMFORD, YOUR HUSBAND?

24 A. YES.

25 Q. YOU SAID YOU WERE UNDER THE INFLUENCE OF

1 METHAMPHETAMINES. WHAT DO YOU MEAN BY THAT? WHAT
2 DOES IT DO TO YOU? WHAT IT DID DO THAT NIGHT?

3 A. KEEPS YOU AWAKE.

4 Q. IS THAT WHAT YOU MEANT BY "UNDER THE
5 INFLUENCE."

6 A. YES.

7 Q. ANYTHING ELSE?

8 A. JUST GIVES YOU LOTS OF ENERGY.

9 Q. MR. MAURO ASKED YOU ABOUT YOUR REQUEST TO
10 HAVE AN ATTORNEY WHEN YOU FIRST TALKED WITH
11 DETECTIVE CARR. LET ME SHOW YOU ON PAGE 17, AND
12 SOMETHING YOU SAID BEFORE THE THING THAT HE ASKED
13 YOU ABOUT. I WANT YOU TO READ, WOULD YOU PLEASE.
14 WHAT'S THE TWO ANSWERS YOU GAVE TO THE POLICE THAT
15 ARE MARKED WITH AN X?

16 A. DO YOU WANT ME TO READ IT OUT LOUD?

17 Q. PLEASE.

18 A. IT SAYS, "I DON'T -- I DON'T WANT TO START
19 ANY TROUBLE WITH YOU GUYS, BUT I REALLY THINK I
20 SHOULD HAVE A LAWYER PRESENT, BECAUSE I DON'T WANT
21 TO IMPLICATE ANYBODY THAT SHOULDN'T BE. I DON'T
22 WANT TO SAY THE WRONG THING. I DON'T WANT TO SAY
23 STUFF THAT I DON'T -- I HAVE A BAD HABIT, WHEN I GET
24 NERVOUS, TO SAY THINGS WRONG. AND I DON'T WANT
25 ANYTHING TO BE TAKEN WRONG. I DON'T WANT ANYTHING

1 TO BE INTERPRETED WRONG. AND I KNOW US -- ME AND MY
2 MAN DID NOT DO ANYTHING. HE WAS WITH ME, I WENT TO
3 WORK."

4 THAT'S ALL, I BELIEVE.

5 A. OKAY. SO WHY DID YOU WANT AN ATTORNEY
6 PRESENT?

7 A. BECAUSE IT'S MY RIGHT.

8 MR. STOTT: THANK YOU.

9 THE COURT: ANYTHING FURTHER OF THIS
10 WITNESS?

11 MR. MAURO: THERE ARE A FEW QUESTIONS THAT
12 I HAVE, YOUR HONOR.

13

14 RECROSS-EXAMINATION.

15 BY MR. MAURO:

16 Q. YOU NEVER TOLD US BEFORE ANYTHING THAT
17 DAMON HAD SAID, HAD YOU? IN FACT, AT THE
18 PRELIMINARY HEARING YOU WERE CLAIMING MARITAL
19 PRIVILEGE.

20 MR. STOTT: I AM GOING TO OBJECT TO THAT.

21 THE COURT: IT'S IRRELEVANT. THE
22 OBJECTION'S SUSTAINED.

23 MR. STOTT: SHE'S NEVER MADE THAT CLAIM.

24 THE COURT: I DON'T KNOW ABOUT THE CLAIM
25 AT THE PRELIMINARY HEARING. I KNOW NOTHING ABOUT

1 THE PRELIMINARY HEARING. THAT OBJECTION'S
2 SUSTAINED.

3 MR. MAURO: IF I MIGHT JUST HAVE THE
4 BENEFIT OF THE RECORD FOR JUST A MOMENT, JUDGE. THE
5 CONCERN THAT I HAVE IS, OBVIOUSLY, THAT'S A HEARSAY
6 STATEMENT. WE NEED SOME WAY OF ATTACKING IT. WE
7 ATTEMPTED TO TRY TO GET THAT INFORMATION AT THE
8 PRELIMINARY HEARING AND--

9 THE COURT: THERE WAS NO OBJECTION MADE TO
10 HER RECITATION OF THAT RESPONSE WHEN SHE MADE IT.

11 MR. MAURO: I UNDERSTAND THAT.

12 THE COURT: SO ALL THAT I'M GOING TO SAY
13 IS THAT, WITHOUT OBJECTION, THE RECORD STANDS NOW AS
14 MADE.

15 Q. (BY MR. MAURO) YOU NEVER TOLD ANYBODY BEFORE
16 TODAY THAT DAMON HAD TOLD YOU THAT?

17 A. YES, I DID.

18 Q. YOU TOLD MAYBE MR. STOTT; RIGHT?

19 A. (NODS HEAD INDICATING AFFIRMATIVE.)

20 Q. AND MAYBE YOUR LAWYERS?

21 A. YES.

22 Q. YOU NEVER GAVE A TAPE-RECORDED STATEMENT
23 TO ANYBODY ABOUT THAT?

24 A. I DON'T BELIEVE SO.

25 Q. OKAY. YOU KEPT TELLING THE POLICE OVER AND

1 OVER DURING THE INITIAL INTERVIEW THAT YOU AND YOUR
2 HUSBAND DIDN'T DO ANYTHING?

3 A. CORRECT.

4 Q. YOU DIDN'T WANT TO SEE YOUR HUSBAND GO TO
5 JAIL?

6 A. NO, I DIDN'T.

7 Q. YOU DON'T WANT TO SEE HIM GO TO PRISON?

8 A. NO, I DON'T.

9 Q. HE IS THE FATHER OF YOUR CHILDREN?

10 A. YES.

11 Q. AND YOU HAVE FIVE CHILDREN TOGETHER?

12 A. WE HAVE FOUR CHILDREN.

13 Q. FOUR CHILDREN TOGETHER. AND IT WOULD A LOT
14 EASIER FOR YOU IF HE WERE OUT OF JAIL RIGHT NOW,
15 HELPING YOU RAISE THE CHILDREN?

16 A. I RAISED THEM BY MYSELF.

17 Q. HELPING YOU SUPPORT THE CHILDREN?

18 A. I SUPPORTED THEM MYSELF ANYWAY.

19 Q. YOU WANT HIM OUT OF JAIL, DON'T YOU?

20 A. I MISS HIM.

21 Q. YOU WANT HIM OUT OF JAIL?

22 A. YES AND NO.

23 MR. MAURO: NOTHING FURTHER, YOUR HONOR.

24 THE COURT: ANYTHING FURTHER OF THIS
25 WITNESS?

1 MR. STOTT: NO, YOUR HONOR. MAY SHE BE
2 EXCUSED?

3 THE COURT: ANY OBJECTION TO HER BEING
4 EXCUSED?

5 MR. MAURO: NO, YOUR HONOR.

6 THE COURT: THANK YOU. YOU MAY BE
7 EXCUSED. YOU MAY STEP DOWN. YOU MAY BE EXCUSED.
8 YOUR NEXT WITNESS, MR. STOTT.

9 MR. STOTT: MAY I LOOK OUTSIDE?

10 THE COURT: YES.

11

12 STEVE WINTERS.

13 CALLED AS A WITNESS, BEING FIRST DULY SWORN, WAS
14 EXAMINED AND TESTIFIED AS FOLLOWS:

15 THE CLERK: PLEASE BE SEATED. STATE YOUR
16 FULL NAME, AND SPELL IT.

17 THE WITNESS: STEVE WINTERS, W-I-N-T-E-R-S,
18 S-T-E-V-E.

19 DIRECT EXAMINATION.

20 BY MR. STOTT:

21 Q. ARE YOU EMPLOYED, MR. WINTERS?

22 A. I AM.

23 Q. FOR WHOM?

24 A. SALT LAKE COUNTY SHERIFF'S OFFICE.

25 Q. WHAT DO YOU DO FOR THEM?

1 A. I'M A DETECTIVE.

2 Q. HAVE YOU HAD ANY SPECIAL EXPERIENCE WITH
3 NARCOTICS?

4 A. I DO.

5 Q. TELL US ABOUT THAT, AS FAR AS YOUR
6 EMPLOYMENT.

7 A. CURRENTLY I AM ASSIGNED TO THE NARCOTICS
8 UNIT.

9 Q. WHAT DO YOU DO?

10 A. INVESTIGATE NARCOTIC TRAFFICKERS.

11 Q. AND HOW LONG HAVE YOU BEEN DOING THAT?

12 A. THE LAST 18 MONTHS, APPROXIMATELY.

13 Q. DO YOU HAVE SPECIAL TRAINING IN THAT?

14 A. I DO.

15 Q. WHAT WAS THAT?

16 A. I DID A P.O.S.T. CERTIFICATION IN NARCOTICS
17 IDENTIFICATION, AS WELL AS SPECIAL TRAINING. I HAVE
18 HAD TRAINING WITH CALIFORNIA NARCOTICS OFFICERS
19 ASSOCIATION, AND THE CLANDESTINE LAB SCHOOL, AS WELL
20 AS SCHOOLS HERE AT P.O.S.T. THROUGH THE POLICE
21 DEPARTMENT.

22 Q. DOES THE EXPERIENCE OR TRAINING YOU HAD
23 WITH CLANDESTINE LABS, DOES THAT INCLUDE
24 METHAMPHETAMINE LABS?

25 A. YES.

1 Q. LET ME DIRECT YOUR ATTENTION TO -- I'M NOT
2 SURE WHAT TIME IT WAS, BUT THE 26TH OF MARCH. DID
3 YOU HAVE OCCASION TO BE CALLED TO 4646 WOODLAND
4 DRIVE, NUMBER FOUR?

5 A. YES.

6 Q. AND WHO CALLED YOU THERE?

7 A. SGT. RUSSO CALLED ME AND ASKED ME TO
8 RESPOND THERE.

9 Q. WERE YOU ASKED TO DO A SEARCH?

10 A. I WAS ASKED TO MEET WITH SGT. TOWNSEND
11 THERE AT THAT LOCATION.

12 Q. SUBSEQUENTLY, WERE YOU ASKED TO DO A
13 SEARCH?

14 A. YES, I WAS.

15 Q. DID YOU KNOW WHOSE RESIDENCE THAT WAS, OR
16 DID YOU FIND OUT?

17 A. YES, I DID. I FOUND OUT WHOSE IT WAS.

18 Q. AND WHOSE IS THAT?

19 A. MR. KIRILUK AND MS. PENROD'S.

20 Q. ARE YOU FAMILIAR WITH THE TERM PROEP?

21 A. YES.

22 Q. WHAT IS IT?

23 A. IT'S 2-PROPENOL, A PRECURSOR TO
24 METHAMPHETAMINE.

25 Q. WHAT DO YOU MEAN BY PRECURSER?

1 A. IT'S A MAJOR INGREDIENT FOR
2 METHAMPHETAMINES. IT'S JUST ONE OF THE INGREDIENTS.

3 Q. SOMETHING YOU HAVE TO HAVE TO MAKE
4 METHAMPHETAMINE?

5 A. YES.

6 Q. ARE YOU FAMILIAR WITH THE TERM COOK?

7 A. YES.

8 Q. WHAT DOES THAT MEAN.

9 A. TRADITIONALLY, THAT MEANS THAT THERE'S A
10 PERSON WHO IS A COOK, WHO ACTUALLY DOES THE PRODUCT,
11 MAKES THE PRODUCT.

12 Q. DID YOU LOOK FOR A PERSON NAMED HOGIE IN
13 THIS CASE?

14 A. YES, I DID.

15 Q. DID YOU FIND HIM?

16 A. NO, I DID NOT.

17 Q. DID YOU MAKE A SEARCH OF MR. KIRILUK'S
18 BEDROOM?

19 A. I DID.

20 Q. DID YOU FIND A PRECURSOR?

21 MR. MAURO: I OBJECT ON FOUNDATION
22 GROUNDS.

23 THE COURT: AS TO DATE AND TIME?

24 MR. MAURO: DATE, TIME, HIS BEDROOM?

25 THE COURT: OBJECTION SUSTAINED.

1 Q. (BY MR. STOTT) I'M TALKING ABOUT THIS
2 EVENING WHEN YOU WERE THERE?

3 A. YES, I DID.

4 Q. ABOUT WHAT TIME WAS IT?

5 A. APPROXIMATELY ABOUT TWO O'CLOCK IN THE
6 MORNING.

7 Q. DID YOU MAKE A SEARCH OF HIS BEDROOM?

8 A. YES.

9 MR. MAURO: OBJECTION, HEARSAY GROUNDS.
10 THEY HAVEN'T ESTABLISHED IT'S HIS BEDROOM.

11 THE COURT: OBJECTION SUSTAINED. I WILL
12 LET YOU ASK FURTHER QUESTIONS.

13 Q. (BY MR. STOTT) DID YOU MAKE A SEARCH OF THE
14 BEDROOM.

15 A. YES.

16 Q. TO DETERMINE WHOSE IT WAS?

17 A. YES.

18 Q. WHOSE WAS IT?

19 A. MR. KIRILUK'S.

20 Q. TELL US, DID YOU FIND--

21 MR. MAURO: AGAIN, I OBJECT. HE HASN'T
22 TOLD US -- HE TELLS US THAT'S HIS BEDROOM, BUT HE'S
23 TOLD US THAT MORE THAN ONE PERSON LIVES THERE.

24 THE COURT: OBJECTION OVERRULED.

25 Q. (BY MR. STOTT) DID YOU FIND A PRECURSOR?

1 A. YES.

2 Q. WHERE WAS IT?

3 A. IN THE CLOSET.

4 Q. WHAT DID IT CONSIST OF?

5 A. IT WAS INSIDE --

6 MR. MAURO: OBJECTION, FOUNDATION, TOO,
7 YOUR HONOR.

8 THE COURT: AS TO A CLOSET?

9 MR. MAURO: AS TO THE PRECURSER.

10 THE COURT: OBJECTION OVERRULED.

11 Q. (BY MR. STOTT) WAS IT IN SOMETHING?

12 A. BACKPACK.

13 Q. IT WAS IN A BACKPACK?

14 A. BOTTLES THAT WERE INSIDE OF THAT.

15 Q. AND WHAT ARE WE TALKING ABOUT? GIVE US A
16 DESCRIPTION OF THE BOTTLES.

17 A. ONE OF THEM WAS A PLASTIC GALLON JUG, AND
18 THERE WAS SEVERAL SMALL MASON JARS.

19 Q. DID YOU LOOK AT THOSE ITEMS?

20 A. I DID.

21 Q. WERE YOU FAMILIAR WITH ITEMS SUCH AS THOSE?

22 A. I AM.

23 Q. WHAT WAS IT?

24 A. I BELIEVED IT TO BE PRECURSORS TO
25 METHAMPHETAMINE.

1 Q. LET ME SHOW YOU WHAT'S BEEN PREVIOUSLY
2 MARKED AS STATE'S EXHIBITS NUMBER 5. DID YOU FIND
3 THAT AT THE HOUSE THAT NIGHT?

4 A. YES, I DID.

5 Q. WHERE?

6 A. IN THE BEDROOM.

7 Q. DID YOU SEIZE IT?

8 A. YES, I DID.

9 Q. DOES IT APPEAR TO BE IN THE SAME CONDITION
10 NOW AS WHEN YOU SEIZED IT?

11 A. YES.

12 MR. STOTT: THANK YOU. THAT'S ALL THE
13 QUESTIONS I HAVE.

14 THE COURT: CROSS EXAMINATION?

15 MR. MAURO: MS. MILLER IS GOING TO BE
16 DOING THAT. BUT BEFORE WE DO THAT, I GUESS YOU WERE
17 CORRECT THAT I DIDN'T OBJECT PREVIOUSLY WHEN
18 MS. MUMFORD WAS TESTIFYING. BUT I WOULD ASK YOU TO
19 GIVE THE JURY A CAUTIONARY INSTRUCTION REGARDING THE
20 STATEMENTS THAT CAME IN AND WERE MADE.

21 THE COURT: I WILL DO THAT IN THE JURY
22 INSTRUCTIONS.

23 MR. MAURO: THANK YOU.

24

25 CROSS-EXAMINATION

1 A. YES.

2 MR. STOTT: THANK YOU.

3 THE COURT: ANYTHING FUTURER?

4 MR. MAURO: NO. YOUR HONOR.

5 MS. MILLER: NO, YOUR HONOR.

6 THE COURT: THANK YOU. MR. WINTERS, YOU
7 MAY STEP DOWN. SINCE IT'S CONVENIENT TO NOON, WE'LL
8 TAKE OUR NOON RECESS. WE'LL ASK THAT YOU RECONVENE
9 SO THAT WE CAN BE IN SESSION AT 1:30. AGAIN, DO NOT
10 DISCUSS THE CASE WITH ANYONE. REMEMBER MY PRIOR
11 ADMONITIONS OF YESTERDAY. BE CAUTIOUS IN ENTERING
12 AND EXITING THE COURTHOUSE IN THE SENSE THAT YOU
13 DON'T MINGLE IN THE HALLS.

14 COME STRAIGHT TO THE CONVENING AREA WHICH
15 THE BAILIFF HAS SHOWN YOU.

16 MR. MAURO: MAY WE APPROACH?

17 THE COURT: YOU MAY IN JUST A MOMENT.
18 BEFORE WE GO INTO RECESS, THEN, YOU MAY APPROACH.

19 (BENCH CONFERENCE, OFF THE RECORD.)

20 THE COURT: ALL RIGHT. WE'LL LEAVE THE
21 SAME RECESS PLAN AS I PREVIOUSLY INDICATED. THERE
22 IS A MATTER OF LAW THAT WE'RE GOING TO DEAL WITH OUT
23 OF THE PRESENCE OF THE JURY AT ABOUT 1:30. WE
24 ANTICIPATE BEING CONCLUDED BY 1:45. I THINK THAT
25 WILL BE A MORE COMFORTABLE TIME. SO WE'LL BE IN

1 RECESS UNTIL UNTIL 1:50.

2 (COURT IN NOON RECESS AT 12:00 P.M.)

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1
2 OCTOBER 30, 1996

SALT LAKE CITY, UTAH

3 P R O C E E D I N G S .

4 (COURT RESUMES SESSION AT 1:30 P.M.

5 DEFENDANT PRESENT, COUNSEL PRESENT. PROCEEDINGS
6 RESUME OUT OF THE PRESENCE OF JURY.)

7 THE COURT: THE RECORD MAY SHOW THAT WE
8 ARE CONVENED PRIOR TO CALLING THE JURY, AT THE
9 REQUEST OF COUNSEL, FOR MATTERS OF LAW. MR. MAURO.

10 MR. MAURO: THAT'S RIGHT, YOUR HONOR. IF
11 YOU WOULD GIVE US LEAVE, WE WOULD CALL CHANCE
12 PENROD, WHO HAD PREVIOUSLY BEEN SWORN AS A WITNESS?

13 THE COURT: ALL RIGHT.

14
15 JOLYNN (CHANCE) PENROD

16 RECALLED AS A WITNESS, HAVING BEEN
17 PREVIOUSLY SWORN.

18 MR. MAURO: WHAT I INTEND TO DO, OUR
19 PROFFER IS TO PUT HER ON THE WITNESS TO STAND TO
20 GIVE THE COURT AN INDICATION OF WHAT HER TESTIMONY
21 WOULD BE, AND THE EVIDENCE WE'LL WANT TO PRESENT.

22 THE COURT: MS. PENROD, IF YOU WILL TAKE
23 THE WITNESS STAND. REMEMBER THAT YOU'RE STILL UNDER
24 OATH IN THIS CASE.

25 THE WITNESS: OKAY.

00000

1
2 THE COURT: OF COURSE WE'RE CONVENED, AS I
3 HAVE STATED EARLIER, OUTSIDE THE PRESENCE OF THE
4 JURY AT THE MOMENT.
5

6 DIRECT EXAMINATION

7 BY MR. MAURO:

8 Q. CHANCE, I WANT TO ASK YOU SOME QUESTIONS
9 ABOUT SOME DISCUSSIONS THAT YOU HAD WITH MIKE BROWN
10 ABOUT A WEEK OR WEEK AND A HALF BEFORE HE WAS
11 KILLED, DO YOU REMEMBER THOSE?

12 A. YES, I DO.

13 Q. HOW DID YOU COME ABOUT HAVING THOSE
14 DISCUSSIONS WITH HIM?

15 A. HE CALLED ME.

16 Q. HE CALLED YOU. WHERE WERE YOU WHEN HE
17 CALLED YOU?

18 A. AT THE APARTMENT.

19 Q. AND WERE YOU PRETTY GOOD FRIENDS WITH MIKE,
20 OR THUMPER?

21 A. YES, I WAS.

22 Q. WHAT DID HE TELL YOU WHEN HE CALLED YOU?

23 A. I TOLD HIM NOT TO COME TO THE APARTMENT
24 BECAUSE JOHN WAS A LITTLE BIT UPSET AT HIM. AND --

25 Q. WHAT DID HE TELL YOU?

1 A. HE SAID THAT HE WASN'T WORRIED ABOUT JOHN.
2 HE WAS MORE WORRIED ABOUT SOME 8-BALL GAME.

3 Q. WHAT DID HE SAY SPECIFICALLY ABOUT WHY HE
4 WAS WORRIED ABOUT THE 8-BALL GAME?

5 A. HE WAS CONCERNED THAT THEY MIGHT HAVE A HIT
6 ON HIM, OR SOMETHING LIKE THAT.

7 Q. THAT'S WHAT HE SAID TO YOU?

8 A. UH-HUH. (AFFIRMATIVE.)

9 Q. WHAT DID HE MEAN BY HIT?

10 A. I'M NOT REALLY QUITE SURE. HE DROPPED THE
11 SUBJECT. HE DIDN'T WANT TO TALK ABOUT IT NO MORE.

12 Q. DID YOU TRY TO TALK TO HIM ABOUT IT?

13 A. YES.

14 Q. WHAT DID YOU SAY?

15 A. JUST KEPT ON ASKING HIM QUESTIONS, AND HE
16 KEPT ON DROPPING THE SUBJECT.

17 Q. DO YOU KNOW WHY HE WAS DROPPING THE
18 SUBJECT?

19 A. HE DIDN'T WANT TO CONCERN ME. THAT'S WHAT
20 I THOUGHT.

21 Q. DID YOU KNOW WHY HE WAS SCARED OR FEARFUL?

22 A. NO. HE WAS JUST CONCERNED ABOUT IT.

23 Q. WAS HE CONCERNED ABOUT HIS SAFETY?

24 A. MORE OR LESS HIS FAMILY'S SAFTEY.

25 Q. AND IS THAT BECAUSE HE BELIEVED SOMEONE HAD

1 A HIT OUT AN HIM?

2 A. YEAH. THAT'S WHAT HE TOLD ME.

3 Q. SOMEONE OTHER THAN JOHN KIRILUK?

4 A. HE WASN'T WORRIED ABOUT JOHN.

5 MR. MAURO: NOTHING FURTHER, YOUR HONOR.

6 THE COURT: ANY OTHER QUESTIONS?

7 MR. STOTT: IF I MAY.

8

9 CROSS-EXAMINATION.

10 BY MR. STOTT:

11 Q. CHANCE, YOU REMEMBER WHEN YOU TALKED TO
12 OFFICER CARR AND TOLD HIM ABOUT THIS, YOU SAID THAT
13 THUMPER SAID THERE WAS SOME HIT ON HIM, SOMETHING TO
14 DO WITH SOME 8-BALL OR SOMETHING?

15 A. I DON'T KNOW. 8-BALL, I THINK. I'M NOT
16 SURE.

17 Q. MAYBE GANG RELATED?

18 A. YES.

19 Q. IS THAT WHAT YOU TOLD OFFICER CARR?

20 A. YES. THAT'S WHAT I TOLD HIM.

21 MR. STOTT: THANK YOU. THAT'S ALL.

22 THE COURT: ALL RIGHT.

23 MR. MAURO: NOTHING FURTHER.

24 THE COURT: THANK YOU. YOU MAY STEP DOWN.

25 PLEASE REMAIN IN THE HALL FOR A MOMENT. DO YOU HAVE

1 ANY ARGUMENT IN RELATION TO MATTERS OF LAW IN
2 RELATION TO THIS TESTIMONY?

3 MR. MAURO: YES, YOUR HONOR. AGAIN, IF
4 YOU WANT, I CAN MAKE IT PART OF THE RECORD. I HAVE
5 NOW MADE COPIES.

6 THE COURT: I THINK YOU NEED TO MAKE A
7 RECORD OF IT.

8 MR. MAURO: I WILL PROVIDE A COPY FOR
9 MR. STOTT.

10 THE COURT: I DID NOT LOOK AT IT
11 YESTERDAY. I RETURNED YOURS TO YOU. I DIDN'T HAVE
12 TIME TO LOOK AT IT MUCH YESTERDAY. AND YOU ARE
13 HANDING ME A MEMO FROM SOPHIA MOORE TO YOU?

14 MR. MAURO: YES, YOUR HONOR. WHAT THAT
15 DOES, IS THAT JUST FOR THE COURT'S -- FOR
16 ILLUSTRATIVE PURPOSES FOR THE COURT, IT'S AN OUTLINE
17 OF OUR ARGUMENT, AND IT TALKS ABOUT RULE 803, WHICH
18 IS 803(3), WHICH IS A HEARSAY EXCEPTION, TALKING
19 ABOUT THEN-EXISTING MENTAL, EMOTIONAL OR PHYSICAL
20 CONDITION, OR THE DECLARANT'S THEN-EXISTING STATE OF
21 MIND.

22 WE HAVE ATTACHED TO THAT TWO CASES FROM THE
23 STATE OF UTAH. ONE IS STATE VERSUS JUAN EKA. THE
24 OTHER IS STATE VERSUS ALBA. THERE ARE SOME OTHER
25 CASES THAT ARE CITED IN THE BODY OF THE MEMORANDUM,

1 BUT WE HAVE ATTACHED TO IT TWO UTAH CASES THAT
2 SUGGEST THAT WHEN THE MENTAL STATE, AS IT RELATES TO
3 THAT IDENTITY, WHEN THAT IS PART OF THE CASE UNDER
4 803, AND PRIOR STATEMENT, WHICH IN THIS CASE WOULD
5 BE A HEARSAY STATEMENT OF THE VICTIM, MEETS A
6 HEARSAY EXCEPTION.

7 AND I THINK IN JUAN EKA THEY SPECIFICALLY
8 TALK ABOUT THAT ON PAGE 1378, AND THEY TALK ABOUT
9 THE KINDS OF THINGS --

10 THE COURT: MY PAGE NUMBERS ARE 1, 2, 3.

11 MR. MAURO: PAGE TWO IS WHAT I'M LOOKING
12 AT.

13 THE COURT: IN THE HEADNOTE.

14 MR. MAURO: RULE 63, AND THEY TALK ABOUT
15 THE OLD RULE, AND THEN THEY TALK ABOUT --

16 THE COURT: NOW, ARE YOU SPEAKING ABOUT
17 THIS IN THE HEADNOTE THAT YOU ARE READING?

18 MR. MAURO: NO, YOUR HONOR. I AM READING
19 ACTUALLY UNDER RULE 63.

20 MS. MILLER: THIS IS FROM THE CASE ITSELF.

21 THE COURT: I HAVE THE CASE ITSELF. ON
22 PAGE TWO OF THE CASE, ON THE RIGHT COLUMN, RULE 63.
23 IS THAT WHAT YOU ARE READING?

24 MR. MAURO: YES. AND THEY TALK ABOUT -- I
25 GUESS WHAT I WANT TO DO IS DISTINGUISH WENETKA,

1 BECAUSE THAT'S AN OLD RULE 63 CASE. IT THEN TALKS
2 UNDERNEATH THAT ABOUT MENTAL STATE OF THE DECEASED,
3 AND IN THIS CASE WE'RE ENTITLED TO GO -- PROVE THAT,
4 TO PROVE THE IDENTITY OF THE KILLER.

5 THE COURT: YOU ARE ENTITLED TO USE THIS
6 STATEMENT TO PROVE THE IDENTITY OF THE KILLER?

7 MR. MAURO: TO BE SOMEONE OTHER THAN MR.
8 KIRILUK.

9 THE COURT: WITH THE TESTIMONY THAT WE
10 HAVE IN THE RECORD FROM THE WITNESSES, THE
11 AUTOMOBILE, FROM THE DRIVING TO THE SCENE, AND YOU
12 ARE TRYING TO INTRODUCE THIS TO MEAN THAT SOME
13 8-BALL GANG WAS OUT OUT THERE THAT NIGHT?

14 MR. MAURO: IT'S NOT BEING OFFERED FOR
15 THAT PURPOSE. IT'S BEING OFFERED FOR HIS STATE OF
16 MIND. NUMBER ONE, THAT HE WASN'T FEARFUL OF JOHN
17 KIRILUK.

18 NUMBER TWO, THAT THERE IS A CO-DEFENDANT IN
19 THIS CASE, THAT PERHAPS THE CO-DEFENDANT IS
20 ASSOCIATEED WITH THOSE FOLKS. WE INTEND TO MAKE AN
21 ARGUMENT THAT THIS RELATES TO THE CO-DEFENDANT.
22 NOW, YOU HAVE -- YOU'VE HEARD THE TESTIMONY.

23 THE CO-DEFENDANT SHOWS UP THE NIGHT OF THE
24 KILLING, HE'S NEVER MET MIKE BROWN BEFORE, AND
25 SUDDENLY HE HAS AN INTEREST IN GOING OUT TO THE

1 HOMICIDE SCENE. AND I THINK THE COURT -- I THINK
2 THE COURT HAS KNOWLEDGE OF THE DRUG UNDERWORLD.
3 SOMEONE HAS A HIT OUT, THEY ARE NOT GOING TO TELL
4 ANYONE. THE FACT THAT WE HAVE GOT A POTENTIAL HIT
5 OUT ON MIKE BROWN DOESN'T EXCLUDE THE MUMFORDS FROM
6 BEING INVOLVED SOMEHOW WITH THAT.

7 I THINK THAT'S A CREDIBLE ARGUMENT. I
8 THINK IT GOES TO THE WEIGHT, AND THE JURY OUGHT TO
9 HEAR THE EVIDENCE.

10 THE COURT: DO YOU HAVE ANY OBJECTION TO
11 THE JURY HEARING THE EVIDENCE?

12 MR. STOTT: WELL, WE DO HAVE AN OBJECTION
13 TO THIS. YES, YOUR HONOR.

14 THE COURT: TELL ME WHAT YOUR POSITION IS?

15 MR. STOTT: FIRST OF ALL, THOSE CASES DO
16 NOT STAND FOR THAT POINT. OBVIOUSLY, THIS IS
17 HEARSAY. THE STATE OF MIND OF MR. MIKE BROWN AT THE
18 TIME WAS NOT RELEVANT AS TO WHETHER HE WAS AFRAID OF
19 SOMEBODY ELSE, OR NOT.

20 THE COURT: LET ME PAUSE FOR A MOMENT.
21 THE ONLY TESTIMONY I'VE HEARD IS THAT HE HAD A STATE
22 OF MINDS OF FEAR TWO WEEKS EARLIER THAN THE EVENT.

23 MR. STOTT: YES.

24 THE COURT: TWO WEEKS EARLIER HE STATED HE
25 WAS NOT AFRAID OF KIRILUK.

1 MR. STOTT: EXACTLY.

2 THE COURT: SO I'M NOT EVEN SURE IT'S
3 RELEVANT.

4 MR. MAURO: OF COURSE THAT WAS
5 CONTRADICTED BY THE TESTIMONY ON CROSS-EXAMINATION
6 OF CHABLIS SCOTT. THAT SAID HE WASN'T FEARFUL, THAT
7 THREATS WEREN'T MADE, AND THERE WAS CERTAINLY A HUGE
8 CONFLICT IN THE EVIDENCE.

9 THE COURT: SHE SAID HE WASN'T FEARFUL TWO
10 WEEKS EARLIER, BUT SHE TOLD HIM NOT TO COME AROUND.

11 MR. MAURO: THAT'S WHAT CHANCE SAID. I'M
12 TALKING ABOUT CHABLIS SCOTT NOW, IN TERMS OF THE
13 FEAR THAT MIKE BROWN HAD FOR JOHN KIRILUK AT THE
14 TIME THE INCIDENT OCCURRED.

15 MR. STOTT: I THINK COUNSEL'S STRETCHING
16 IT TO MAYBE FIT HIS IMPRESSION OF THE EVIDENCE. BUT
17 THAT'S NOT NECESSARILY SO. I JUST DON'T UNDERSTAND,
18 ONE, THAT IT'S RELEVANT, AND TWO, I DON'T SEE HOW HE
19 GETS AROUND THE HEARSAY STATEMENTS. IT'S COMPLETELY
20 HEARSAY. HIS CASES DON'T SUPPORT THAT. HIS CASES
21 ARE SITUATIONS WHERE THEY TRY TO GET IN EVIDENCE OF
22 STATEMENTS MADE BY A VICTIM EARLIER, THAT WAS
23 OVERHEARD BY SOME PEOPLE.

24 AND THE COURT SPECIFICALLY SAID YOU CAN'T
25 BRING THEM IN. AND THEN THEY INDICATE IN DICTA THAT

1 MAYBE ON IDENTIFICATION -- WHICH I DON'T KNOW WHAT
2 IT MEANS, NO ONE KNOWS WHAT IT MEANS, AND SAYS WE
3 CAN GET THEM IN. BUT THESE CASES CERTAINLY DO NOT
4 UPHOLD THAT POSITION, BECAUSE THEY ARE TALKING ABOUT
5 SOMETHING ELSE.

6 THEY ARE TALKING ABOUT WHETHER OR NOT IT
7 WAS SUICIDE, OR WHETHER OR NOT IT WAS AN ACCIDENT,
8 OR WHATEVER. AND I THINK YOUR HONOR IS AWARE OF THE
9 CASE LAW. I DO HAVE CASE LAW THAT SAYS BEFORE
10 EVIDENCE, EVEN IF IT IS A PRIOR THREAT BY A THIRD
11 PARTY, SHOULD BE ADMITTED, THERE SHOULD BE SOME
12 SUBSTANTIAL EVIDENCE LINKING THAT THIRD PARTY TO THE
13 CASE.

14 WE DON'T HAVE ANY EVIDENCE AT ALL, OTHER
15 THAN THIS LINKING OF A SO-CALLED 8-BALL GANG, TO THE
16 CASE. AND UNTIL THAT COMES IN, ANY EVIDENCE OF THAT
17 SHOULD NOT BE ADMITTED. ESPECIALLY HEARSAY
18 EVIDENCE.

19 THE COURT: SHOW ME IN THIS CASE WHERE
20 IT-- TELL ME THE FACTUAL SETTING YOU HAVE IN THE
21 WENETKA CASE, THAT WHICH YOU SAY STANDS FOR THE
22 PROPOSITION THAT EVIDENCE SHOULD BE ADMITTED.

23 MR. MAURO: MOST OF THESE CASES ARE
24 DEALING WITH VICTIMS OF HOMICIDE. I WILL BE HONEST
25 WITH THE COURT, THEY DEAL WITH THEM IN THE CONTEXT

1 OF THE VICTIM AND THE DEFENDANT. THE VICTIM SAYS TO
2 SOMEONE, TWO WEEKS BEFORE, "MY HUSBAND" -- WHO LATER
3 BECOMES THE DEFENDANT-- "WANTS TO KILL ME. I AM
4 FEARFUL OF MY HUSBAND."

5 AND SO WHAT IT'S BEEN OFFERED FOR IN THOSE
6 CASES -- AND I HAVE GOT A NUMBER OF OTHER CASES HERE
7 WHERE IT'S OFFERED TO SHOW THE STATE OF MIND OF A
8 VICTIM, FEAR OF SOMEONE KILLING THEM. AND IT GOES
9 TO THE IDENTITY OF THE KILLER, NOT TO THE FEAR OF
10 THE VICTIM. AND IT GOES TO IDENTITY.

11 WHAT WE'RE SAYING IN THIS CASE ESSENTIALLY
12 IS THE SAME THING. NUMBER ONE, MIKE BROWN WAS
13 FEARFUL. NUMBER TWO, MIKE BROWN WAS FEARFUL OF
14 SOMEONE OTHER THAN JOHN KIRILUK.

15 NUMBER THREE, MIKE BROWN WAS FEARFUL THAT
16 SOMEONE OTHER THAN JOHN KIRILUK HAD A HIT OUT ON
17 HIM. AND I THINK WE SHOULD BE ENTITLED TO ARGUE
18 THAT TO THE JURY. THE 803 EXCEPTION GOES TO THE
19 STATE OF MIND EXCEPTION. IT TALKS ABOUT THE STATE
20 OF MIND EXCEPTION AS BEING A LEGITIMATE AND VIABLE
21 EXCEPTION. IT'S ALWAYS -- YOU KNOW, THE CASES,
22 QUITE FRANKLY, ARE REALLY CASES WHERE THE
23 PROSECUTION TRIES TO GET IT IN.

24 AND THEY ARE ALWAYS TRYING TO USE IT
25 AGAINST THE DEFENDANT. AND ALL THE CASES THAT I

1 HAVE GOT, AND THERE'S A NUMBER OF CITES IN MY FILE,
2 THAT ARE FROM OTHER JURISDICTIONS, ALMOST ALL OF
3 THEM ARE WHEN, IN THE PROSECUTOR'S CASE, THEY WANT
4 GET THE VICTIM'S STATE OF MINE IN, BECAUSE IT'S
5 RELEVANT, IT'S ACCURATE, AND IT DESCRIBES HOW THEY
6 FELT OR OR THE EXTENT OR SCOPE OF THEIR FEAR, AS IT
7 RELATES.

8 AND I THINK IT RELATES TO JOHN KIRILUK IN A
9 DIFFERENT WAY HERE. BECAUSE HE WAS NOT FEARFUL OF
10 JOHN KIRILUK, HE'S FEARFUL OF SOMEONE OTHER THAN
11 JOHN. AND THERE'S CLEARLY OTHER PEOPLE INVOLVED IN
12 THIS CASE. AND THAT'S WHY I THINK IT'S IMPORTANT.

13 THE COURT: WELL, LET ME READ THE RULE FOR
14 THE RECORD. RULE 803. LET ME READ FOR THE RECORD.
15 THE HEARSAY EXCEPTION IS AVAILABILITY OF THE
16 DECLARANT, (3) THE THEN-EXISTING MENTAL EMOTIONAL OR
17 PHYSICAL CONDITION A STATEMENT OF THE DECLARANT.
18 THEN-EXISTING STATE OF MIND, EMOTIONS, SENSATION OR
19 PHYSICAL CONDITIONS, SUCH AS INTENT, PLAN, MOTIVE,
20 DESIGN, MENTAL FEELING, PAIN, AND BODILY HEALTH, BUT
21 NOT INCLUDING THE STATEMENT OF MEMORY OR BELIEF TO
22 PROVE THE FACT THEY REMEMBERED OR BELIEVED UNLESS IT
23 RELATES TO THE EXECUTION, REVOCATION,
24 IDENTIFICATION, OR TERMS OF THE DECLARANT'S WILL."

25 NOW, WHY DON'T YOU TELL ME WHAT THAT JUST

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1 SAID IN CLEAR AND CONCISE LANGUAGE.

2 MR. MAURO: IT'S DIFFICULT. IT'S NOT A
3 MARVEL OF CLARITY. AT LEAST I DON'T THINK IT IS.

4 THE COURT: BUT WHAT YOU'RE ASKING ME TO
5 DO IS TO PUT INTO EVIDENCE TESTIMONY FROM A WITNESS
6 HERE, WHO SAYS THAT SHE HEARD -- AND THIS WITNESS IS
7 CHANCE PENROD; RIGHT?

8 MR. MAURO: YES.

9 THE COURT: SHE HEARD THE VICTIM, TWO
10 WEEKS EARLIER, WHILE SHE WAS TELLING HIM NOT TO COME
11 AROUND MR. KIRILUK, SAY, "I'M NOT AFRAID OF HIM.
12 I'M AFRAID OF THE 8-BALL GANG", OR WHATEVER.

13 MR. MAURO: "I'M AFRAID OF SOMEONE --
14 MAYBE-- I'M NOT QUITE SURE IF IT HAS A HIT OUT ON
15 ME." AND I THINK IT'S FAIR TO SAY, GIVEN THE NATURE
16 OF THE TESTIMONY ABOUT THE DRUG UNDERWORLD, AND
17 DETECTIVE WINTERS AND ALL THE OTHER PEOPLE THAT HAVE
18 TESTIFIED ABOUT THE KINDS OF DRUGS AND THE DRUG
19 SITUATION, THAT IT WOULD BE FAIR TO SAY THAT IF YOU
20 WERE INVOLVED IN THAT COMMUNITY, IT MIGHT BE
21 DIFFICULT TO KNOW EXACTLY WHO WAS GOING TO HAVE A
22 HIT OUT ON YOU. HE STATED WHO IT WAS. HE DIDN'T
23 KNOW OR WASN'T ABLE TO IDENTIFY THE PEOPLE, BUT I
24 THINK IN THE OVER-ALL CONTEXT OF THIS CASE, WITH THE
25 DRUGS THAT HAVE BEEN DISCUSSED, THE DRUGS THAT HAVE

1 BEEN TRIED, WITH THE THINGS THAT WE HAVE TALKED
2 ABOUT, IT'S NOT GOING TO BE LIKELY THAT HE IS GOING
3 TO KNOW EXACTLY WHO IT IS THAT'S TRYING TO KILL HIM.

4 THE COURT: THIS RULE IS DESIGNED -- IT
5 ALLOWS FOR SUCH TESTIMONY, TO TRY TO DETERMINE THE
6 TRUTH IN RELATION TO THE VICTIM AND THE ACCUSED.
7 AND IT'S NOT DESIGNED TO TRY TO FIND WHETHER THE
8 VICTIM WOULD HYPOTHETICALLY SPECULATE THAT SOME
9 THIRD PARTY COULD BE AFTER THE VICTIM.

10 AND I CAN'T SEE THE RELEVANCE OF THAT
11 CONVERSATION WITH MS. PENROD, FIRST, IN TERMS OF
12 TIME; SECOND, IN TERMS OF IT'S CONNECTION TO THE
13 DEFENDANT IN THIS CASE, WHICH IT HAS NO CONNECTION
14 TO. AND IT ONLY CREATES THE POTENTIAL THAT -- THE
15 COMPLETELY SPECULATIVE POSSIBILITY COULD EXIST IN
16 RELATION TO THIS OFFENSE.

17 AND THERE IS-- DO YOU HAVE ANY OTHER FACTOR
18 THAT WOULD SHOW THAT SOME INSIDE GROUP I.E. THE
19 8-BALL GANG OR ANYBODY ELSE WAS LURKING IN THE
20 BACKGROUND?

21 MR. MAURO: OTHER THAN THE CONDUCT OF THE
22 MUMFORDS, WE DON'T.

23 THE COURT: WE KNOW THAT THE-- WE KNOW
24 THAT MUMFORD, FROM WHAT I'VE HEARD IN TESTIMONY SO
25 FAR, MUMFORD AND KIRILUK WERE THE ONLY TWO THAT WENT

1 TOGETHER WITH THE DECEASED, MR. BROWN, TO THE
2 LOCATION IN A REMOTE ISOLATED AREA. EVEN IF IT IS
3 ESTABLISHED THAT -- IF THERE WERE SPECULATION THAT
4 MUMFORD WAS THE ACTUAL KILLER, MR. KIRILUK WOULD BE
5 OBLIGATED AND LIABLE FOR THE SAME KIND OF OFFENSE,
6 FOR ASSISTING.

7 MR. MAURO: WE DISAGREE WITH THE CONTENT
8 OF THAT TESTIMONY, BASED ON CROSS-EXAMINATION OF
9 CHABLIS SCOTT. WE JUST THINK THAT THAT'S CLEARLY AN
10 ISSUE OF WEIGHT FOR THE JURY TO DECIDE WHETHER HE
11 DID ANYTHING, OR NOT. AND OUR POSITION IS, HE
12 DIDN'T.

13 THE COURT: WELL, I CAN'T SEE THE
14 RELEVANCE OF THIS KIND OF TESTIMONY. THE OBJECTION
15 OF THE STATE IS GRANTED, AND THE TESTIMONY REGARDING
16 A CONVERSATION WITH MS. PENROD TWO WEEKS EARLIER AS
17 TO THE DECEDENT VICTIM'S ALLEGED FEAR IS
18 QUESTIONABLE AS TO BOTH IT'S RELEVANCE AND IT'S
19 APPLICATION TO THIS OFFENSE. ANYTHING FURTHER?

20 MR. MAURO: NO, YOUR HONOR.

21 THE COURT: ANY OTHERS MATTERS OF LAW WE
22 NEED TO DEAL WITH BEFORE WE CALL THE JURY?

23 MR. MAURO: WE'D ALSO ASK, YOUR HONOR, IF
24 THE JURY COULD BE INSTRUCTED TO DISREGARD THE
25 STATEMENT OF MS. REBECCA MUMFORD REGARDING WHAT

1 DAMON MUMFORD HAD TOLD HER. AND I THINK WE HAD
2 RAISED THAT ISSUE AT THE BENCH.

3 I THINK THE INDICATION THAT YOU GAVE TO US
4 IS THAT YOU WILL NOT DO THAT AT THIS TIME, BUT THEN
5 WOULD CONSIDER JURY INSTRUCTIONS AS A CURATIVE
6 MEASURE FOR THAT.

7 THE COURT: I INVITED YOU TO PROVIDE ME
8 WITH AN INSTRUCTION LATER ON. THERE WAS NO TIMELY
9 OBJECTION MADE. SHE MADE THE COMMENT THAT SHE DID
10 AS TO HIS CONVERSATION WITH HER. WE COULD CERTAINLY
11 GO BACK IN THE RECORD AND FIND OUT EXACTLY WHAT IT
12 WAS THAT SHE SAID. BUT THERE WAS NO OBJECTION TO
13 IT. ARE YOU NOW MAKING A FORMAL OBJECTION FOR THE
14 RECORD?

15 MR. MAURO: I THINK WE WOULD, NOW, FOR THE
16 RECORD. WE WOULD MAKE A FORMAL OBJECTION. I THINK
17 THE JURY --

18 THE COURT: MOTION TO STRIKE?

19 MR. MAURO: A MOTION TO STRIKE.

20 THE COURT: ALL RIGHT. MR. STOTT?

21 MR. STOTT: WELL, THERE ARE TWO REASONS I
22 THINK IT SHOULD BE DENIED. NUMBER ONE, IT WASN'T A
23 TIMELY MOTION. THERE WAS SEVERAL MINUTES THAT WENT
24 ON BEFORE HE ASKED TO APPROACH, AND SEVERAL MORE
25 QUESTIONS AND ANSWERS. SECOND OF ALL, THEY OPENED

1 THE DOOR. IT WAS PURSUANT TO THEIR QUESTIONS ABOUT
2 WHAT HAPPENED. THEN ON CROSS-EXAMINATION,
3 SPECIFICALLY, SHE WAS ASKED, "WHAT DID DAMON TELL
4 YOU?" AND SO ALL I DID WAS FOLLOW UP ON THAT.

5 THE COURT: DO YOU HAVE ANYTHING FURTHER,
6 MR. MAURO?

7 MR. MAURO: I DON'T HAVE THE EXACT RULE,
8 BUT MY REMEMBRANCE IS THERE THAT IS A RULE OF
9 EVIDENCE THAT DEALS WITH THAT, TALKS ABOUT CURATIVE
10 INSTRUCTIONS. IT MAY BE 104.

11 THE COURT: THAT WAS THE REASON WHY, WHEN
12 IT WAS BROUGHT TO MY ATTENTION, QUITE A BIT AFTER IT
13 HAD OCCURRED, I SAID THE RECORD WILL SIMPLY STAND AS
14 IT IS NOW, AND I INVITED YOU TO PREPARE AN
15 INSTRUCTION TO THE JURY.

16 AND I DON'T KNOW WHAT ELSE I COULD DO WITH
17 IT THAN SIMPLY LET YOU LOOK AT THAT. IT SEEMS TO ME
18 WE NEED TO LOOK AT ONE OTHER THING, AND THAT IS, HOW
19 THE TESTIMONY CAME OUT, AND WHO INVITED THE
20 TESTIMONY. THAT'S ONE OF THE REASONS WHY OBJECTIONS
21 ARE ANTICIPATED TO BE MADE WHEN THE EVENT IS RIGHT
22 PRESENT IN COURT.

23 SO RIGHT NOW, MY POSITION IS THAT THE CASE
24 IS GOING TO STAND AS IT IS HAS NOW BEEN TRIED. BUT
25 I WILL INVITE YOU TO PROVIDE TO ME AN INSTRUCTION

1 THAT WE CAN THEN DEAL WITH WHEN WHEN WE FINALLY
2 INSTRUCT THE MURY.

3 MAYBE WE COULD INDICATE THAT THEY SHOULD
4 NOT CONSIDER THAT, IF THAT'S THE RULING THAT
5 ULTIMATELY SEEMS APPROPRIATE.

6 MR. MAURO: OKAY. I GUESS YOU'RE RIGHT.
7 FOR THE RECORD, I WOULD FORMALLY MAKE THE OBJECTION
8 NOW, AND ASK THAT YOU INSTRUCT THEM NOW. BUT I
9 UNDERSTAND THE COURT'S RULING.

10 THE COURT: OKAY. ALL RIGHT. ANYTHING
11 FURTHER BEFORE WE CALL THE JURY?

12 (NO RESPONSE.)

13 LET'S CALL THE JURY?

14 (FOLLOWING PROCEEDINGS CONTINUE NOW IN
15 PRESENCE OF JURY.)

16 MR. MAURO: CAN YOU EXCUSE MS. PENROD?

17 THE COURT: ANY OBJECTION?

18 MR. STOTT: NO, YOUR HONOR.

19 THE COURT: YES, IF YOU WOULD DO THAT
20 PLEASE.

21 THE COURT: ALL RIGHT. YOU ARE CONCLUDED
22 WITH YOUR PRIOR WITNESS, MR. WINTERS. YOUR NEXT
23 WITNESS.

24 THE COURT: DETECTIVE CARR, YOUR HONOR.

25 THE COURT: COME FORWARD PLEASE, MR. CARR.

1 REMEDIES THAT MAY POTENTIALLY BE ASSERTED. I WANTED
2 TO KNOW IF HE WAS SATISFIED WITH THE PRESENTATION,
3 OR IF THERE WAS ANYTHING HE WANTED TO PRESENT, THAT
4 WAS NOT.

5 I NEED TO HAVE YOU STEP FORWARD AND LOOK AT
6 THE EXHIBITS, AND SEE THAT THOSE EXHIBITS ARE
7 PROPERLY SENT TO THE JURY.

8 THERE WAS NEVER PRESENTED TO ME ANY
9 REQUESTED INSTRUCTION REGARDING THE ISSUES THAT CAME
10 UP DURING THE COURSE OF THE TRIAL AS TO THE HEARSAY.
11 AND SO THAT I ASSUME IT'S WAIVED.

12 MR. MAURO: AND I HAD INTENDED WITH OUR
13 INSTRUCTION ON THE INFORMER\BENEFIT TO THE WITNESS
14 TESTIMONY TO MAKE THAT -- TO MAKE AN ARGUMENT BASED
15 ON THAT INSTRUCTION THAT I HAD SUBMITTED.

16 THE COURT: OKAY. AND THAT WAS NEVER
17 PRESENTED. ALL RIGHT. HERE'S THE EXHIBITS. IF YOU
18 WILL GO THROUGH THEM, AND EACH OF YOU CERTIFY ON THE
19 RECORD THAT THOSE ARE THE EXHIBITS THAT SHOULD BE
20 SENT TO THE JURY.

21 MR. STOTT: EVERYTHING IS HERE.

22 MR. MAURO: EACH YOU YOU HAVE CERTIFIED
23 THEY'LL BE THE EXHIBITS. THEY WILL NOW BE DELIVERED
24 TO THE JURY FOR THEIR FINAL DELIBERATION, AND COURT
25 WILL BE IN RECESS. I'D LIKE YOU EACH TO BE WITHIN,

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ADDENDA I

ARTICLE IV. RELEVANCY AND ITS LIMITS.

Rule 401. Definition of "relevant evidence."

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Rule 402. Relevant evidence generally admissible; irrelevant evidence inadmissible.

All relevant evidence is admissible, except as otherwise provided by the Constitution of the United States or the Constitution of the state of Utah, statute, or by these rules, or by other rules applicable in courts of this state. Evidence which is not relevant is not admissible.

Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time.

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Rule 404. Character evidence not admissible to prove conduct; exceptions; other crimes.

(a) **Character evidence generally.** Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:

(1) **Character of accused.** Evidence of a pertinent trait of character offered by an accused, or by the prosecution to rebut the same;

(2) **Character of victim.** Evidence of a pertinent trait of character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or

evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;

(3) **Character of witness.** Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

(b) **Other crimes, wrongs, or acts.** Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Amended effective October 1, 1992.)

ARTICLE VII. OPINIONS AND EXPERT TESTIMONY.

Rule 701. Opinion testimony by lay witnesses.

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

(Amended effective October 1, 1992.)

Rule 702. Testimony by experts.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 804. Hearsay exceptions; declarant unavailable.

(a) *Definition of unavailability.* "Unavailability as a witness" includes situations in which the declarant:

- (1) is exempted by ruling of the court on the ground of privilege from testifying concerning the subject matter of the declarant's statement; or
- (2) persists in refusing to testify concerning the subject matter of the declarant's statement despite an order of the court to do so; or
- (3) testifies to a lack of memory of the subject matter of the declarant's statement; or
- (4) is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or
- (5) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

A declarant is not unavailable as a witness if the exemption, refusal, claim of lack of memory, inability, or absence is due to the procurement or wrongdoing of the proponent of the declarant's statement for the purpose of preventing the witness from attending or testifying.

(b) *Hearsay exceptions.* The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) *Former testimony.* Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) *Statement under belief of impending death.* In a civil or criminal action or proceeding, a statement made by a declarant while believing that the declarant's death was imminent, if the judge finds it was made in good faith.

(3) *Statement against interest.* A statement which was at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in

the declarant's position would not have made the statement unless believing it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicate the trustworthiness of the statement.

(4) *Statement of personal or family history.* (A) A statement concerning the declarant's own birth, adoption, marriage, divorce, legitimacy, relationship by blood, adoption or marriage, ancestry, or other similar fact of personal or family history, even though the declarant had no means of acquiring personal knowledge of the matter stated; or (B) a statement concerning the foregoing matters, and death also, of another person, if the declarant was related to the other by blood, adoption, or marriage or was so intimately associated with the other's family as to be likely to have accurate information concerning the matter declared.

(5) *Other exceptions.* A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

(Amended effective October 1, 1992.)